

UNITED STATES OF AMERICA  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

DAVID M. BARNETT, )  
 )  
 Petitioner, )  
 )  
 vs. ) No. 4:03-CV-614 ERW  
 )  
 DON ROPER, )  
 )  
 Respondent. )

TRANSCRIPT OF EVIDENTIARY HEARING  
BEFORE THE HONORABLE E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE

Volume VI  
August 29, 2014

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1 (The following proceedings were held in open court  
2 on August 29, 2014 at 8:33 a.m.):

3 THE COURT: Dr. Reynolds. Whenever you're ready,  
4 sir.

5 MR. HAWKE: Thank you, Your Honor.

6 VICTORIA REYNOLDS, Ph.D,  
7 Having been previously sworn, was examined and testified as  
8 follows:

9 CROSS-EXAMINATION

10 BY MR. HAWKE:

11 Q. Good morning.

12 A. Good morning.

13 Q. I have a few more questions that I need to ask this  
14 morning in light of your testimony yesterday afternoon. And  
15 you recall that you remain under oath; is that correct?

16 A. Correct.

17 Q. Now, as I read your report, you did not make an Axis 1  
18 or Axis 2 or Axis 3 diagnosis of David Barnett; is that  
19 correct?

20 A. I didn't make a diagnosis on any Axis according the  
21 DSM, that's correct.

22 Q. And you did not use DSM Guidelines then in your  
23 assessment of Mr. Barnett; is that correct?

24 A. I wasn't making a diagnosis.

25 Q. And you were not using the guidelines in DSM in your

1 description of Mr. Barnett; is that correct?

2 A. I don't think I understand your question.

3 Q. DSM has certain guidelines, certain descriptors of  
4 conditions and events; is that correct?

5 A. Certain -- yeah, descriptors for making diagnoses, yes.

6 Q. And since you were not making a diagnosis, you did not  
7 feel confined by those descriptions in DSM; is that correct?

8 A. To make a diagnosis, that's correct.

9 Q. Or to render an opinion about Mr. Barnett; is that  
10 correct?

11 A. I don't think I could parse out taking out a part of my  
12 knowledge about the DSM and diagnosis, so I can't say it's  
13 not available to me as I'm talking to him. It's knowledge  
14 that I have in my mind, so --

15 Q. But you did not apply that knowledge in rendering your  
16 opinion about David Barnett?

17 A. No, that wouldn't be correct.

18 Q. That would be correct?

19 A. No, that would not be correct. That is part of my  
20 available knowledge base. But I was not making a diagnosis  
21 so I didn't apply the use of the DSM criteria to make a  
22 diagnosis.

23 Q. Now, when you were describing David Barnett, you used  
24 the term sexual abuse of David Barnett?

25 A. Correct.

1 Q. And how did you define that term? What did you mean  
2 when you used that term?

3 A. When a parent takes pornographic pictures of a child,  
4 touches a child's genitals, touches them against their will,  
5 violates their sexual boundaries, I define that as sexual  
6 abuse.

7 Q. Even though that is not the definition of sexual abuse  
8 in the DSM-5?

9 A. You're welcome to enlighten me about what that  
10 definition is.

11 Q. Are you familiar with DSM-5?

12 A. Yes.

13 Q. What's the definition of sexual abuse in DSM-5?

14 A. I don't think they define sexual abuse.

15 Q. Isn't it true that DSM-5, the definition of sexual  
16 abuse in DSM-5 require -- that the definition of sexual abuse  
17 in DSM-5 require that the sexual act involving the child be  
18 intended to provide sexual gratification to the parent or  
19 caregiver?

20 A. I would describe pornography as giving sexual  
21 gratification to the caregiver.

22 Q. Well, you draw that inference.

23 A. I don't know of any other definition of pornography.

24 Q. So that one example fits that definition?

25 A. That example fits that definition well.

1 Q. Can you describe for the Court how many episodes of  
2 child abuse has to occur in a child's childhood in order for  
3 the effects of child abuse that you described to occur?

4 A. It can be anywhere from one incident, if we're talking  
5 about traumatic incident, it can be a single incident  
6 stressor or it can be chronic.

7 Q. And it's certainly possible that there could be  
8 numerous events of child abuse that do not lead to those  
9 characteristics?

10 A. What characteristics are you speaking of?

11 Q. The characteristics you testified about like  
12 dissociation and anger management.

13 A. No, if we're talking about traumatic events, the things  
14 that I described are consistent with traumatic events,  
15 whether the traumatic event occurred one time or many times.

16 Q. And I understand that it's consistent, but it doesn't  
17 automatically follow, does it?

18 A. Yes, if we're talking about by definition traumatic,  
19 yes, those follow.

20 Q. Every time?

21 A. Yes, that is the definition of trauma, as opposed to an  
22 event that is not traumatizing.

23 Q. Okay. Now, you reviewed records provided to you by the  
24 petitioner's counsel; is that correct?

25 A. Correct.

1 Q. And did those materials include Dr. Bruce Harry's  
2 January 27, 1997 report?

3 A. I'm looking at my records here. Can you say his name  
4 again, please?

5 Q. Bruce Harry.

6 A. Dr. Bruce Harry. I don't see that, no.

7 Q. Did those materials include Dr. Michael Gelbort's  
8 September 6th, 1996 neuropsychological evaluation of David  
9 Barnett?

10 A. I don't recall if it was in the summary of his medical  
11 records. It may -- I may have, but I don't recall if it was  
12 in his summary of his medical records.

13 Q. Summary of medical records. Where were those medical  
14 records from?

15 A. They were his hospitalizations and psychiatric records,  
16 both medical and psychiatric.

17 Q. Okay. What hospital were they from?

18 A. From Jewish Hospital, Jewish Hospital, Hyland Center,  
19 St. Louis Children's Hospital, Family Clinical and  
20 Counseling, Glennon Children's Hospital, Cardinal Glennon  
21 Children's Hospital.

22 Q. And were all of those records dated before  
23 February 1996?

24 A. I couldn't say according to what I have listed in my  
25 report. I didn't include the dates of all of those records.

1 Q. Would it refresh your memory if you took some time to  
2 go through those records again so you can answer questions?

3 A. If you'd like me to.

4 Q. Yes.

5 MR. HAWKE: I'd like this witness to refresh her  
6 memory.

7 THE COURT: All right.

8 A. And your question is when did the medical records begin  
9 and end?

10 Q. Yes. And specifically is Dr. Gelbort's report in those  
11 medical records?

12 THE COURT: I think the question was were they  
13 before February 1996.

14 MR. HAWKE: Yes, Your Honor.

15 A. Somebody is going to have to give me the records, I  
16 don't have them up here.

17 Q. I don't have them. Did you bring records with you?

18 A. No, I didn't.

19 Q. Oh.

20 A. You're welcome to hand them to me or we can just move  
21 on, and I couldn't answer your question.

22 Q. Okay. Do you know where Dr. Gelbort practices?

23 A. No.

24 Q. So you didn't notice that in the records you say that  
25 Dr. Gelbort's report might be included in?



1 A. Right. I don't know if I saw it or not.

2 Q. Do you recall what his conclusion was?

3 A. As I said, I can't remember if I read the record.

4 Q. Okay. And I notice your report specifically says that  
5 you reviewed the testimony of Dr. Schultz?

6 A. Yes.

7 Q. Okay. Did you review the reports of Dr. Schultz?

8 A. Yes.

9 Q. And what were the dates of those reports?

10 A. I would have to check what the dates of those reports  
11 were. I read them, though.

12 Q. Okay. And looking at your report, where are they  
13 listed?

14 A. Excuse me?

15 Q. When I look at your report, where will I find them  
16 listed?

17 A. The reports of Dr. Schultz?

18 Q. Yes.

19 A. It shows Schultz's trial testimony. I don't show the  
20 Schultz report listed, although they would have, I'm  
21 assuming, been part of the medical records.

22 Q. And on what basis do you make that assumption?

23 A. It's just in the way I group the summaries of what I  
24 was reading, I considered psychiatric reports part of his  
25 medical record.

1 Q. Okay. Now, you consider psychiatric reports part of  
2 his record, right?

3 A. Correct.

4 Q. Now, Dr. Schultz is not a psychiatrist, she's a  
5 psychologist; isn't that correct?

6 A. I don't know what her credentials are. I didn't hold  
7 those in mind.

8 Q. Weren't those discussed in the trial testimony?

9 A. I'm sure they were. That's not something I kept track  
10 of.

11 Q. Okay.

12 MR. HAWKE: May I approach the witness, Your Honor?

13 THE COURT: Sure.

14 Q. Have you had an opportunity to look at those three  
15 documents that I handed to you?

16 A. Yes.

17 Q. Can you describe for the Court what those three  
18 documents are, what they purport to be?

19 A. They purport to be a neuropsychological evaluation, a  
20 psychosocial assessment, and a psychosocial assessment.

21 Q. And the two psychosocial assessments are from  
22 Psychologist Schultz?

23 A. Yes.

24 Q. Have you seen those documents before?

25 A. I would have to look through them to know if these are

1 the ones exactly that I read, but they look familiar to me.

2 Q. Now -- and they look familiar to you even though they  
3 are not specifically listed as documents you reviewed in your  
4 report?

5 A. Correct.

6 Q. Okay. Are there any other psychological or psychiatric  
7 evaluations of David Barnett that you reviewed that are not  
8 specifically listed in your report?

9 A. Not that I'm aware of.

10 Q. You reviewed -- you interviewed David Barnett for I  
11 believe you said about 13, 14 hours as part of your  
12 evaluation?

13 A. Yes.

14 Q. And were there other people that you interviewed?

15 A. No.

16 Q. You did not interview Eric Barnett?

17 A. No.

18 Q. Or Kris Barnett?

19 A. No.

20 Q. Or John Barnett?

21 A. No.

22 Q. When you interviewed David Barnett, did you give him  
23 the Traumatic Life Events Questionnaire?

24 A. Yes, I did.

25 Q. Did he state that the traumatic life event for him was

1 the murder of his foster grandparents?

2 A. No, he did not.

3 Q. What did he state was the traumatic life event for him?

4 A. There wasn't one. It's a questionnaire with a whole  
5 variety of potential traumatic life events, and we went  
6 through them. And he indicated whether he had been through  
7 that or not.

8 Q. Okay. Did he indicate that a traumatic life event for  
9 him had been the death of anybody in his family?

10 A. Yeah, losses. Yes, that's a category on the TLEQ.

11 Q. And he did affirmatively agree that there had been a  
12 loss or a death in his family?

13 A. More than one.

14 Q. Okay. And did he include his foster grandparents as  
15 people that he had lost in his family?

16 A. In the Traumatic Life Events Questionnaire, we didn't  
17 discuss that.

18 Q. Okay. He did not volunteer that information?

19 A. He didn't endorse that in that item.

20 Q. Okay. And you did not follow up on that, did you?

21 A. There is a reason for that. In the field of trauma,  
22 whether it's combat trauma, you don't necessarily consider  
23 victimizing of another a traumatic experience for the person  
24 who has done the victimizing. So if you've committed an  
25 atrocity in war, for example, we don't consider that

1 traumatic victimization of the person you're talking to. So  
2 it's not typical to ask about victimization of others when  
3 I'm assessing for traumatic experiences of the individual.

4 Q. And that's true even when the person that is killed or  
5 is murdered a family member?

6 A. It's generally the first principle is that if you  
7 victimize another that we don't necessarily consider that a  
8 traumatic event for the person.

9 Q. And he certainly didn't volunteer it as a traumatic  
10 event to him?

11 A. He didn't describe it in losses.

12 Q. Okay. And did he ever express remorse to you over his  
13 murder of his foster grandparents?

14 A. Yes.

15 Q. Okay. And did he express anger about the loss of his  
16 foster grandparents?

17 A. I don't recall him expressing anger, no.

18 Q. He was able to control anger for that particular moment  
19 when you were on that topic; is that correct?

20 A. That would be correct.

21 Q. Okay. Did you do any scaling of David Barnett in how  
22 traumatized he had been? Was he like minorly traumatized,  
23 averagely traumatized, major trauma?

24 A. I don't understand your use of those terms, that's not  
25 how I think or how I use. So the answer to that is I don't

1 know what you mean by "scaling" in your terms.

2 Q. You're not able to describe that scientifically then  
3 for the Court whether the amount of trauma he allegedly  
4 received was minor or major?

5 A. I don't know -- you're using a lot of terms that don't  
6 make sense in my profession. So you're using scaling, and it  
7 doesn't make sense to me. That's not how I think about it.

8 Q. So the way you think about it is that a person is  
9 either traumatized or not traumatized?

10 A. Well, if we're talking about the criterion for a  
11 traumatic event, he certainly had a lot of traumatic events,  
12 as I described, you know, many traumatic events.

13 Q. Now, have you ever been certified to testify as an  
14 expert in forensic psychology?

15 A. No.

16 Q. And can you tell the Court when you were first  
17 certified to testify as an expert?

18 A. I'd have to look at my CV again about the first time I  
19 testified. It would have been in 2013, I believe.

20 Q. And I understand that you're a clinical psychologist,  
21 not a forensic psychologist; is that correct?

22 A. That's correct.

23 Q. And I understand that you are a psychologist and not a  
24 psychiatrist?

25 A. Correct.

1 Q. And that means that you do not have the training of a  
2 medical school behind you?

3 A. Correct.

4 Q. And I understand from your testimony yesterday that you  
5 did not give a test to David Barnett, a psychological test to  
6 David Barnett during your interviews?

7 A. Correct.

8 Q. When you are speaking to a person like David Barnett,  
9 and I'm speaking generally, not specifically about him, but  
10 generally speaking does the person that you speak to, do they  
11 always have an accurate memory of the trauma that allegedly  
12 happened to them?

13 A. No, there's no way for anybody to know if somebody's  
14 memory is entirely accurate. It's generally understood in  
15 the field that memory is variable, it's constructive, it's  
16 accurate. Traumatic memory in particular, though, has  
17 qualities that make certain details tend to be accurate.

18 Q. Okay. And it's fair to say that some people that you  
19 would interview or could interview might minimize the amount  
20 of trauma that they've experienced?

21 A. Correct.

22 Q. And it's fair to say that some people that you  
23 interview might overestimate the amount of trauma that  
24 they've experienced?

25 A. Correct.

1 Q. And isn't it true that some people might minimize their  
2 role in the conflict that might be within a household?

3 A. Sure.

4 Q. Okay. During direct examination you made a comment  
5 that David Barnett had good conduct while at the Missouri  
6 Department of Corrections; is that correct?

7 A. Yes.

8 Q. Okay. Did you examine the list of conduct violations  
9 that he had received?

10 A. I think I did, yeah.

11 Q. Can you describe for the Court what those conduct  
12 violations were for?

13 A. Off the top of my head, I can't, no.

14 Q. Would you disagree with the statement that David  
15 Barnett had 11 conduct violations since his receipt into the  
16 Missouri Department of Corrections?

17 A. I can't agree or disagree because I can't remember what  
18 they were or how many.

19 Q. But you believe he had good conduct at the Missouri  
20 Department of Corrections, even though you cannot remember  
21 his conduct violations?

22 A. I read his Department of Corrections record, and I know  
23 that he participates in the Potosi Training Program and that  
24 that requires a certain conduct record that allows him to do  
25 that. So from that, that defines in their definition good



1 enough conduct to participate in that program.

2 Q. Can you refresh my memory from your testimony yesterday  
3 of what dissociation is?

4 A. Well, it's a complicated phenomenon where it basically  
5 means that things that belong together mentally and  
6 emotionally and behaviorally are separated. And then there  
7 are a variety of manifestations of that.

8 Q. Okay. And in your review of the materials, did you see  
9 any examples of David Barnett's dissociation in connection  
10 with the offense?

11 A. What events?

12 Q. Let's start with the murder of the foster grandparents.

13 A. Did I see evidence of dissociation?

14 Q. Yes.

15 A. I saw remembering things at different times, so when I  
16 was watching the -- his interview, he would be reviewing the  
17 steps or the details, and then he would remember something  
18 and put something in that he had remembered. It seemed like  
19 he increasingly remembered more as time went on. That could  
20 be an indication of not remembering much being dissociated  
21 during the acts itself. It could be an indication of shock.  
22 It could be an indication of a lot of things. So that's  
23 probably what I noticed.

24 Q. So what you're describing, what I hear there is the  
25 symptomatology could have a variety of different sources, not

1 just childhood trauma; isn't that correct?

2 A. My -- when I describe David and dissociation, I'm  
3 specifically referring to the various ways in which he coped  
4 with the traumatic events of his childhood starting very  
5 early and continuing through his adolescence. So that  
6 adaptation was in place. It's not like it disappeared or  
7 went anywhere. It's still present today, the capacity to  
8 dissociate.

9 Q. And you don't consider his murder of the foster  
10 grandparents as a traumatic event, so there should not be  
11 dissociation connected with that; isn't that true?

12 A. Well, you're saying that somebody dissociates only  
13 during a traumatic event, and I've tried to explain that  
14 dissociation is an adaptation that shows up sometimes outside  
15 of traumatic events.

16 Q. And you do not diagnosis David Barnett as having post  
17 traumatic stress disorder, do you?

18 A. I did not make a diagnosis of David.

19 Q. In your report you accurately recorded the things that  
20 David Barnett told you; is that correct?

21 A. To the best of my ability.

22 Q. Okay. So if David Barnett told you something that was  
23 significant, it would be in the report; is that correct?

24 A. There's a selection process when you -- by anyone's  
25 estimation when you put a report together -- if it were a

1 transcript, it would be a direct reflection, which I'm not  
2 capable of writing that fast, so by it being a report,  
3 there's a process of selection of what I put in and what  
4 doesn't go in or what gets summarized rather than directly  
5 quoted. That's the process of applying perspective and  
6 expertise. So I'm not sure what your question was.

7 Q. Is it fair to say if you felt it was important, it  
8 would be in the report?

9 A. Yes. Yeah.

10 Q. So in answer to the Judge's question yesterday about  
11 the bathtub situation, you stated that David Barnett told you  
12 that someone hit him; is that correct?

13 A. He believed it was the woman sitting next to the  
14 bathtub.

15 Q. But on page 8, paragraph 11 of your report, you do not  
16 record that significant piece of information, do you?

17 A. In which an adult broke his nose, he described being in  
18 the tub with another little girl. There's a female presence  
19 by the side of the tub. Well, I do presume that somebody  
20 reading that would understand that the person by the tub is  
21 most likely the one who hit him as opposed to somebody who  
22 wasn't in the room. I mean, that's just an assumption I make  
23 about my readers.

24 Q. Okay. Or it could well have happened that he slipped  
25 in the bathtub, isn't it?

1 A. No, that's not at all what he described. That's not  
2 what I would deduce from anything he told me.

3 Q. But you do not include in this paragraph, "he said that  
4 the adult hit his nose"?

5 A. Well, there are probably lots of places in the report  
6 where I don't say "he said that." It's just I guess a  
7 stylistic writing thing when I string together a series of  
8 sentences, the implication or the implied understanding is  
9 that the subject here is the woman by the tub, and that an  
10 adult broke his nose, and the adult by the tub is the woman  
11 who broke his nose. If it wasn't explicit enough that's  
12 either a writing error or an error on the part of the reader  
13 in understanding my intent.

14 Q. My understanding exactly. Now, your methodology, you  
15 come up with a hypothesis about an interview or about a  
16 person, is that correct, that you're going to test?

17 A. I have ideas about what it is I want to find out more  
18 about.

19 Q. And yesterday you said you approached the David Barnett  
20 situation with two hypotheses?

21 A. Correct.

22 Q. And can you refresh my memory about what those were?

23 A. Well, I'm not sure I'll state exactly as I stated it  
24 yesterday, so if you want to read them back to me, I can say,  
25 yes, I said that. They were along the lines of I thought

1 that there was possibly sexual abuse very early in his  
2 childhood and there was more sexual abuse that may have  
3 happened with Mr. Barnett -- yes, Mr. Barnett than I thought,  
4 with John Barnett.

5 Q. Okay. And once you have these hypotheses, you then  
6 look for information that supports those hypotheses; is that  
7 correct?

8 A. Well, you also look for information that disconfirms  
9 it. That's the process.

10 Q. And what questions did you ask David Barnett searching  
11 for information that would not confirm hypothesis one?

12 A. Not confirm that he had early childhood sexual abuse?

13 Q. Yes.

14 A. Well, that is asking questions about the atmosphere  
15 that he can remember, what he knows about where he grew up,  
16 what the environment was like, including as we talked about  
17 yesterday positive memories, attachments he had, how he was  
18 doing in school, to get as broad an understanding of the  
19 context of his living situation as possible, and then as much  
20 as I could find out about his attachments to those people  
21 that were his caretakers.

22 Q. Did you ask him leading questions or open-ended  
23 questions?

24 A. Both.

25 Q. Why did you ask him leading questions?

1 A. Well, just the reason you ask me leading questions,  
2 there are all sorts of questions to ask, and it doesn't  
3 negate the answer if the question is leading, meaning leading  
4 them to talk about a certain topic. So I would ask him to  
5 talk about a certain topic.

6 Q. By your definition of child abuse, traumatic child  
7 abuse, how many people in the United States have suffered  
8 from traumatic child abuse?

9 A. I don't have that number in my head.

10 Q. Well, can you give the Court a range then of what that  
11 number might be?

12 A. No.

13 Q. Can you give the Court any help at all in trying to  
14 figure out what that number might be?

15 A. Sure. The Department of Justice has good statistics on  
16 the rates of childhood maltreatment from, say, I think it's  
17 probably 1973 or four to currently. And those change. You  
18 know, they don't do those statistics every year, it's  
19 something like every five years or so. And they are  
20 excellent statistics on the rates of childhood maltreatment,  
21 if you're talking about broadly maltreatment. And then they  
22 break it down by sexual abuse and physical abuse and neglect.

23 Q. But that's not the same thing as traumatic child abuse  
24 that you have been trying to describe?

25 A. Childhood maltreatment and traumatic -- I'm not sure

1     what -- I'm not understanding your terms.  You're parsing out  
2     terms that I don't understand here.

3     Q.     Ma'am, you used the statement "child maltreatment" --

4     A.     Right.

5     Q.     -- as defined by the Department of Justice.

6     A.     Okay.

7     Q.     And you've been using the term "traumatic child  
8     abuse" --

9     A.     Okay.

10    Q.     -- for the past 24 hours.

11    A.     Okay.

12    Q.     Those are your terms.

13    A.     Fine.  Yeah, I mean them to be the same thing.

14    Childhood maltreatment and abuse of children are defined -- I  
15    define them as the same thing, and I believe that those  
16    statistics would reflect that.

17    Q.     And is that 5 percent of the population?

18    A.     As I said, I don't know.  I don't know.  You'd have to  
19    look those up.

20           MR. HAWKE:  Okay.  I think that concludes my  
21    questions, Your Honor.

22           THE COURT:  All right.  Redirect.

23                       REDIRECT EXAMINATION

24    BY MS. CARLYLE:

25    Q.     Good morning.

1 A. Good morning.

2 Q. Dr. Reynolds, just so we're clear on what you reviewed,  
3 let me ask you to take a look at page 3 of your report.

4 A. Okay.

5 Q. And do you list there all of the categories of records  
6 that you included, that you reviewed?

7 A. Yes.

8 Q. And I know you -- I believe you testified yesterday  
9 that your two categories of information were your  
10 conversation with David Barnett and documents that you  
11 reviewed?

12 A. Yes.

13 Q. And you've also said that you have reviewed the  
14 videotapes of his confession and his reenactment, and you  
15 heard Eric Barnett's testimony?

16 A. Yes.

17 Q. Okay. So when you said that you reviewed, I think you  
18 called them records, did that include, for example, the  
19 penalty phase transcripts in this case? Were you using the  
20 word "records" to mean documents?

21 A. Oh, yes. I'm sorry, yes.

22 Q. So they are not all records in the sense that they are  
23 records of some agency or some hospitalization, okay.  
24 Because in your report you list that you reviewed the  
25 transcripts of the penalty phase, you reviewed police reports



1 connected with this offense?

2 A. That's correct.

3 Q. And you reviewed some affidavits that were submitted  
4 for post-conviction?

5 A. Yes.

6 Q. And you reviewed the deposition of Shirley Acree?

7 A. Yes.

8 Q. Did you literally review thousands of documents?

9 A. Yes.

10 Q. And you didn't list each document specifically in your  
11 report, did you?

12 A. I didn't. I did group them. There were so many and so  
13 many pages that to make sense of it I grouped it by category.  
14 And by big grouping like medical records and then say, for  
15 example, medical records from St. Anthony's. But within that  
16 there may have been five or six different documents.

17 Q. And specifically within the records of David Barnett's  
18 psychiatric treatment, there may have been evaluation reports  
19 in those records?

20 A. Yes.

21 Q. Okay. Did you tell David Barnett at the -- during your  
22 assessment that you wanted him to tell you the truth?

23 A. Yes.

24 Q. Did you tell him it was important to do that?

25 A. Yes.

1 Q. What did you tell him about why he should tell you the  
2 truth?

3 A. That I couldn't make a fair evaluation of what he had  
4 been through, and I wouldn't necessarily except by  
5 contradiction or something that contradicted something I read  
6 knowing if he was telling the truth. So it was beholden on  
7 him to tell the truth, and he said he would.

8 Q. Now, you said that he had -- that during -- you told  
9 Mr. Hawke that David Barnett had expressed remorse for the  
10 murder of his adopted grandparents. Do you remember what he  
11 said about that?

12 A. I'm thinking what he said. Well, he said he was very  
13 sorry for having done that. He understood how many people he  
14 had hurt in addition to the victims. That's what I basically  
15 remember.

16 Q. Okay. Did he take full accountability and  
17 responsibility for the murders?

18 A. Yes.

19 Q. And you were asked a little bit yesterday about the VA  
20 screening instrument that you had used when you were working  
21 at the VA. Is that an instrument -- a test that's used to  
22 determine what areas need to be further explored for  
23 treatment?

24 A. Yes.

25 Q. And were you asked to treat David Barnett?

1 A. No.

2 Q. Okay. Was there any reason to do a screening test for  
3 David Barnett?

4 A. No. The referral question was the screening from the  
5 team.

6 Q. And we'll get to that in a second. But the screening  
7 test itself doesn't diagnose sexual abuse or traumatic  
8 events, does it?

9 A. No.

10 Q. And, again, I'd refer you to page 3 of your report.  
11 You were given a referral question, which I think you state  
12 there. And if you will just please tell us what it was, what  
13 you were asked to do.

14 A. I was asked to evaluate his history of traumatic  
15 exposures from early childhood through his adulthood, and  
16 specifically to evaluate the possibility of childhood  
17 maltreatment and neglect, physical abuse, sexual abuse, early  
18 losses, and then to assess the various impacts of those  
19 potential exposures.

20 Q. So you weren't specifically asked to evaluate the  
21 positive influences in David Barnett's life?

22 A. No.

23 Q. Okay. Does your report include some instances of  
24 positive experiences and influence in his life?

25 A. It's important when -- again, this goes back to what

1 makes trauma. Trauma in a child's life, if it's coming from  
2 a caretaker, the experience of attachment and the good  
3 experiences, no matter how small or infrequent, make those  
4 betrayals all the more potent for the child. So in the  
5 course of evaluating trauma, it's always the case that we  
6 talk about positive memories, good feelings. You know,  
7 whether, again, they are warranted or they are very  
8 infrequent, the child or the person talking to me always has  
9 some, yeah.

10 Q. Okay. But you didn't attempt a comprehensive catalog  
11 of all the good things that had ever happened to David  
12 Barnett?

13 A. No, this was an assessment of lifetime trauma.

14 Q. Okay. And does your report fairly and impartially  
15 answer the referral question?

16 A. Yes.

17 Q. Is there a scientific test for determining whether an  
18 adult has been sexually abused as a child?

19 A. No.

20 Q. You were asked whether Mr. -- to, I guess, attempt to  
21 scale David Barnett in the area of -- in the amount of  
22 trauma. Was what happened to David Barnett in your  
23 experience a typical childhood upbringing?

24 A. No, it was not typical.

25 Q. What was atypical about it?

1 A. Atypical was how early the traumatic experiences began  
2 and how long they persisted and how unfortunately they added  
3 up at various phases of his development, that stands out.  
4 It's remarkable really how many -- just when he might have  
5 been getting his feet underneath him or just when something  
6 might have happened that would help him to recover and  
7 integrate the earlier traumas, yet another loss or experience  
8 of abuse by a caretaker would happen. That's notable about  
9 his history. And it really continued all the way through his  
10 adolescence.

11 Q. So his traumatic experiences started early; is that  
12 correct?

13 A. In the first days of his life.

14 Q. Continued until -- really until this offense occurred?

15 A. It looks like it. I mean, the last -- the last  
16 experience of physical abuse by John Barnett occurred I think  
17 when he was probably 15 or 16, so it kept going.

18 Q. And then he began to be, for example, the victim of  
19 domestic violence from Secil after that?

20 A. That's correct.

21 Q. And in addition to them going on for a long time, there  
22 were a lot of them, weren't there?

23 A. You know, some kids have experiences where they have  
24 child maltreatment, it just kind of stays in the physical  
25 abuse realm and verbal and emotional, it doesn't enter a

1 sexual violation. He had that, and then he had the kind of  
2 emotional abandonments and betrayals by caretakers that are  
3 part of those other abuses, but they are also distinct in and  
4 of themselves. So he unfortunately hit a lot of the categories  
5 of what we call interpersonal trauma, and those are the most  
6 complex traumas for people to remain resilient or recover  
7 from.

8 Q. As a matter of fact, about 20 pages of your report is a  
9 list of the traumatic experiences he's gone through, isn't  
10 it?

11 A. That's correct.

12 Q. Now, you were asked whether Mr. Barnett volunteered the  
13 murder of his adoptive grandparents as a traumatic event in  
14 his life. Was that a question you asked him?

15 A. As I explained, I wouldn't ask him because he was -- he  
16 was victimizing another. I could ask the victim -- I mean, I  
17 obviously can't, but it's not appropriate. In addition, he  
18 was taking responsibility for this as something he had done,  
19 not an experience of victimization that he had been through.

20 Q. Could any scientist, either now or back in 1997,  
21 dissect David Barnett's psychology into a pie chart of  
22 percentages of the various influences on it?

23 A. No.

24 Q. Okay. Let me ask you -- let's go back for a moment to  
25 this issue of the broken nose. Let me ask you to take a look

1 at page 8 of your report again. Does your report say that  
2 this is an incident in which an adult broke his nose?

3 A. Yes, it does.

4 Q. And it also mentions that there's someone -- that he's  
5 in the tub and there's a female presence next to the tub?

6 A. Yes, it does.

7 Q. From your conversation with Mr. -- with David Barnett,  
8 was it clear to you that that person hit him on the nose?

9 A. It was very clear to me.

10 Q. Okay. Now, you're not a lawyer, right?

11 A. I am not a lawyer.

12 Q. Okay. So when you're asked whether you asked -- let me  
13 go back just for a moment. Let me ask you also to take a  
14 look at page 9 of your report, specifically paragraph 13.  
15 And is this part of your discussion of the nose injury?

16 A. It is. The description in the report of the nose  
17 injury is contextualized pretty heavily in terms of how it is  
18 that he remembered and why it is he remembered that way. And  
19 that is consistent with two things. One, his developmental  
20 age. We talked yesterday about narrative memory versus other  
21 kinds of memory. And he wasn't at an age where he would have  
22 full narrative memory. But then also traumatic memory tends  
23 to be fragmentary, and at that age it tends to be recalled as  
24 somatic physical sensation. And that's how he described that  
25 memory to me.

1 Q. Right. But in paragraph 13, you mention that there was  
2 an adult female present, don't you?

3 A. Yeah, I said, "It's notable that David has no memory of  
4 the incident causing the adult female present to express  
5 emergent care or concern." In other words, his memories of  
6 the injury and the assaults and the blood, but he has no  
7 memory of that adult reaching out to him to comfort him or  
8 anything like that.

9 Q. So let me loop back a little bit here. Mr. Hawke asked  
10 you if you asked Mr. Barnett leading questions. And you  
11 said -- or non-leading questions and you said both. Let me  
12 just ask you because "leading question" is kind of a lawyer  
13 term and you're not a lawyer. What do you understand by the  
14 term leading questions, when you say you asked him leading  
15 questions?

16 A. Well, I think of a leading question as giving  
17 information and then soliciting. So I might say something  
18 like, I want to talk about your experiences before you may  
19 even be able to remember them well, and then -- so I provide  
20 context. I'm leading him into the area in which we will  
21 begin talking.

22 Q. So a leading question for you is what you ask instead  
23 of just saying, okay, tell me everything that happened in  
24 your whole life?

25 A. Well, that's right. And it's -- as we talked about in



1 terms of the method and why I'm an expert in trauma and not  
2 something else, there are really specific ways in which you  
3 create the possibility that that person is going to be able  
4 to remember, to remember details, and to remember as  
5 accurately as possible. So that's I guess how I -- I  
6 misunderstood the term "leading question."

7 Q. I don't -- I don't know that you misunderstood it, I  
8 just wanted to make sure we were -- that I understood your  
9 concept of it. Because as I said, it is a particular legal  
10 concept that I wouldn't expect you to understand, so that was  
11 why I was asking you.

12 Now, Mr. Barnett was -- has been in the Department  
13 of Corrections since 1997, hasn't he?

14 A. Yes.

15 Q. And I believe Mr. Hawke mentioned that during that  
16 period of time he's had 11 conduct violations. You heard  
17 Mr. Hawke say that?

18 A. I did.

19 Q. He didn't ask you the -- he didn't lay out for you  
20 exactly what those conduct violations were, did he?

21 A. No.

22 Q. Okay. And you know -- do you know -- do you frequently  
23 review prison records in connection with your work?

24 A. I do. And my recollection is they were minor  
25 infractions. But, again, because I can't remember

1 specifically, I don't know what those infractions were or  
2 even how many.

3 Q. But you know that conduct violation in the prison  
4 system lexicon means a wide range of behavior?

5 A. I do.

6 Q. From things like sleeping through count all the way up  
7 to killing somebody?

8 A. Yes.

9 Q. Now, Mr. Hawke asked you I think a question about post  
10 traumatic stress disorder, and you said you hadn't made that  
11 diagnosis. You didn't make any diagnosis, did you?

12 A. I didn't make any diagnosis.

13 Q. Nor did you rule out any diagnosis, did you?

14 A. No, that wasn't --

15 Q. Is there any scientist now or in 1997 who could  
16 actually give a percentage about the relative effect of  
17 genetic and biologic factors versus environmental factors on  
18 a person's personality and psychological makeup?

19 A. No.

20 Q. What -- you mentioned that when you were interviewing  
21 people about trauma in their early history that they began to  
22 provide details that tend to be accurate. Say a little more  
23 about that. What kinds of details are you talking about?

24 A. Often the sensory details are accurate. The centrality  
25 of them is something that has to be determined in the course

1 of the assessment. But when people lack explicit memory, and  
2 by that I mean that narrative memory we were talking about,  
3 very often they will encode the sensory environment and then  
4 they will also remember that either by telling me, this is  
5 what my body is doing, or their body will be doing it, and I  
6 will say what's happening, and then they -- and it may be  
7 connected to that traumatic event. So those tend to be  
8 fairly robust indicators of what was happening at the time of  
9 the trauma.

10 Q. So, for example, I think you told us yesterday that  
11 when David was telling you about this nose injury, he also  
12 reported to you that he actually began to experience a  
13 feeling of constriction in his nose and inability to breathe,  
14 which was the same thing he was describing to you?

15 A. Yes.

16 Q. Okay. Now, in assessing what -- in preparing your  
17 report and assessing the traumatic events in David's life,  
18 did you look for corroboration of what he told you?

19 A. Yes, I always look for corroboration.

20 Q. And in this case that would include the records you had  
21 and the affidavits and the other testimony?

22 A. Yes.

23 Q. Okay. Did you intentionally leave out details from  
24 your interview with David, leave them out of your report if  
25 you thought they were important?

1 A. Not if they were important, no.

2 Q. And as -- I know you said you had -- you went into the  
3 evaluation with some hypotheses and areas you wanted to  
4 explore. When you wrote your report did you ignore  
5 information that disconfirmed those hypotheses?

6 A. No, I didn't. What the report reflects is the attempt  
7 to integrate information that would -- that without an  
8 understanding of trauma seems disconfirming. For example,  
9 his attachment and bond to caretakers that objectively we  
10 might look at their behavior and say how could any child love  
11 that parent or want to live with that parent, say Robert  
12 Biggerstaff, or how could any child in a prolonged way live  
13 with a foster parent who is doing this, wouldn't they just  
14 run and call the police? So these what appear to be  
15 contradictory behaviors are understandable in the context of  
16 how children adapt to trauma and survive that experience.

17 Q. And I think there was a question raised yesterday  
18 about -- you gave some testimony about David Barnett's  
19 actions since the trial, and I just wanted to clarify.  
20 Information about the effect of trauma on the human  
21 personality was available at the time of trial as it is now,  
22 wasn't it?

23 A. Yes.

24 Q. Dr. Reynolds, can David Barnett now or back in 1996 act  
25 independently of his history of trauma including physical

1 abuse, sexual abuse, emotional abuse, neglect and  
2 abandonment?

3 A. No.

4 Q. Can he -- is he free from his past history, whatever he  
5 does?

6 A. No.

7 MS. CARLYLE: I don't have any more questions.

8 EXAMINATION

9 BY THE COURT:

10 Q. I want to get a better understanding of the totality of  
11 the sexual events that you believe contributed at least to  
12 preventing him from acting independently of various events.

13 Early in your testimony there was a reference to a  
14 report, an investigative report, where he had rather  
15 extensively discussed events leading up to the death of his  
16 grandparents.

17 THE COURT: And I guess this is more directed to  
18 counsel, will I see that report? It was referenced but it  
19 was never received in evidence.

20 MR. SINDEL: Maybe if we could approach the side  
21 bar, because I want to make sure I understand.

22 THE COURT: Okay.

23 (The following proceedings were held at the bench  
24 and outside the hearing of open court:)

25 MR. SINDEL: I just want to make sure. There was a

1 police report. There were a couple of police reports that  
2 were prepared by the Glendale Police Department. And I  
3 believe --

4 MS. CARLYLE: No, wait, are you talking -- I'm sorry  
5 to interrupt, but are you talking about a report about the  
6 murders?

7 THE COURT: No.

8 MS. CARLYLE: Okay. I'm sorry.

9 THE COURT: There was a lot of discussion about what  
10 he had said to his trial team about events of his life. And  
11 then there was a discussion about some -- apart from the  
12 trial team, what the trial lawyers asked him, there was  
13 discussion about an investigative report, which I interpreted  
14 as meaning some investigators for lawyers had prepared. And  
15 it detailed a lot more information than what his lawyers  
16 seemed to know and asked him about. And I'd like to see that  
17 report.

18 MR. SINDEL: I think, first of all, it's part of the  
19 legal file. And, secondly, I can make it an exhibit if  
20 there's no objection. But just to be sure --

21 MS. CARLYLE: Do you think you know what you're  
22 talking about?

23 MR. SINDEL: I can ask.

24 MS. CARLYLE: I'm not sure.

25 MR. SINDEL: I think you're asking, there's a report

1 prepared in 1996, I think it was September 26th, '96, but it  
2 doesn't say who prepared it, but apparently it was part of  
3 the preparation process for Eric Barnett's testimony.

4 MS. CARLYLE: For Eric Barnett, yes.

5 MR. SINDEL: So I can certainly submit that if  
6 there's no objection. Because we did ask Eric Barnett about  
7 whether or not there were things he had said in that report.

8 THE COURT: All right.

9 MR. SINDEL: So I'll put that out and mark it.

10 MS. CARLYLE: I'm sorry, my conclusion I thought we  
11 were talking about an interview with David Barnett, and I  
12 didn't think I had one of those. Okay.

13 (The following proceedings continued within the  
14 hearing of open court:)

15 BY THE COURT:

16 Q. I'd like to get a better understanding of the totality  
17 of the abhorrent or the sexual experiences of Mr. Barnett  
18 from his earliest years through 1996. Dr. Schultz says in  
19 her testimony in the trial, "Mr. Barnett said he is not sure  
20 if he was physically or sexually abused while living with his  
21 family of origin." And that would have been relatively early  
22 in his life. There was something that was mentioned about  
23 him being held by someone, a female, who was not perhaps  
24 entirely clothed. I remember that event.

25 So at least -- and I realize that certain kinds of

1 memory can be suppressed. I understand that concept. But  
2 just based on what she was saying, he did not recall anything  
3 about any kind of physical or sexual abuse in his family of  
4 origin. And he also said that -- and the hospital records --  
5 and that's also stated in the hospital records in 1992. So  
6 there is little known at the time of the trial about his  
7 sexual abuse at least up until four years before the death of  
8 his grandparents.

9 And then it says among the hotline allegations only  
10 in November 1993, that was the only hotline that was  
11 substantiated, and there was reason to suspect physical and  
12 sexual abuse of the three boys; David, Kris, and Eric. And  
13 then she said when she interviewed him, she asked Mr. Barnett  
14 what happened and he said nothing happened.

15 So at least through -- up until the time of trial,  
16 there is substantial questions about any sexual abuse at all  
17 that at least he had revealed.

18 And what I want to do is go through from memory what  
19 I have about specific sexual events. Clearly there was a  
20 photograph that Mr. John Barnett took of him coming from the  
21 shower. Mr. Barnett was sensitive about that, raised it,  
22 complained about it. Mr. Barnett said something to the  
23 effect, well, we're all grown up, we're all men here. There  
24 was that event.

25 There was the event of him being sexually abused by



1 an 18-year-old babysitter at the time he was 11 years old  
2 where she encouraged him to touch all parts of her body  
3 including her pubic area.

4 He saw a lot of sexual misconduct by John Barnett of  
5 Kris and Eric.

6 He also experienced personally sitting on the lap of  
7 John Barnett many times, being kissed, being fondled. But in  
8 his experience it was outside of his clothing.

9 There was evidence of aggressive sexuality by Secil  
10 Blount.

11 And so I have all of that firmly in mind. What I  
12 want to know, what else is there in the record, the totality  
13 of the record that I haven't described concerning sexual  
14 misconduct by anyone against Mr. Barnett?

15 A. One thing that I didn't hear you mention was the  
16 pictures John Barnett took of David and his brothers  
17 revealing pulling their pants down to expose their genitals  
18 while they were asleep.

19 Q. Yes, that's true.

20 A. So the experience of that personally for him but also  
21 then knowing that this happened to his brothers. So the  
22 witnessing of, you know, and then the personal experience.

23 There were other things I mentioned in the report  
24 when he was living with John Biggerstaff and Deborah Corder,  
25 where a family friend, it may have been a family member, but

1 he just remembers that it was an older male. He was four or  
2 five, took him down the street, and began having sexual  
3 relations with his girlfriend in front of David, and telling  
4 him this is -- I want you to watch. He was very explicit  
5 about I want you to watch, and this is what you're going to  
6 be doing with your girlfriends.

7 When -- and now I want to try to describe why I say  
8 the evidence that you gave about the specific acts that  
9 Mr. Barnett, John Barnett, did to David are one thing. The  
10 atmosphere that he created in the household of the potential  
11 for something going farther in addition to the violations  
12 that you mentioned that would be uncomfortable for a child or  
13 scary or just made them feel unsafe, he also created  
14 household rituals and rules in which boundary, he would cross  
15 sexual boundaries. And Eric described one where he would  
16 take Eric's clothes and hide them so Eric had to run by him  
17 while he was naked.

18 While David can't and doesn't describe some of those  
19 things happening to him, it doesn't mean that they didn't  
20 happen. The reason I say that is twofold. One is that males  
21 are extremely reluctant to endorse these kinds of events for  
22 all the reasons that Eric mentioned. I think he said it took  
23 him 20 years to actually get to the details of his penis  
24 being touched or being in the bed with John Barnett.

25 While I didn't present evidence of those because

1 David didn't tell me, in my professional opinion I would say  
2 that those experiences probably happened similarly to David,  
3 but because I can't -- he can't tell me, I can't say for  
4 sure, it's just my knowledge of how these things happen and  
5 how males tend -- some will never tell them, they will take  
6 them to their grave. And I've heard men tell me that.

7 So that's -- those are not hard evidence, but I  
8 consider it in the context it's likely more happened to David  
9 than he even told me.

10 And the denials that you mentioned, retractions when  
11 asked by the police or by DFS, that's also not unusual. It's  
12 not just in male children that we see that, we see that in  
13 all children or many, many children who make allegations, and  
14 then when under investigation they will say that didn't  
15 happen. Some of that is out of protection and fear about  
16 what's going to happen to them, what's going to happen in  
17 terms of punishment to the caretaker.

18 It's also context dependent as I spoke about that in  
19 any given moment, we remember more or less about things. And  
20 we particularly remember less about things that we don't want  
21 to remember and that are very painful. So that even though  
22 David may have been able under certain conditions to say,  
23 yes, John Barnett touched me or I did have these experiences  
24 or in his early childhood he may have, the context in which  
25 those -- that information becomes available to him matters.

1           And usually a somewhat -- a high-stakes interview  
2       where somebody is going to get punished and somebody is going  
3       to lose is not a great environment for disclosing details.  
4       And we see this in children, it's very common for them to  
5       retract. It doesn't mean that it didn't happen. We just  
6       know the phenomenon of retraction happens.

7           In terms of his early exposure, what he remembered  
8       about being -- I told you the story of being taken down the  
9       street by that man and his girlfriend and remembering the --  
10      being in an environment where women were naked and touching  
11      him and he was seeing women's bodies and watching adults have  
12      sex. I do consider that sexual -- it's within the context of  
13      neglect, but that kind of exposure of the child repeatedly to  
14      adult sexual situations has an effect.

15          And David told very clearly more about the effects  
16      than his actual memory, that he was not -- and I go through  
17      this quite a bit in my report -- that he wasn't very  
18      interested in sexual activity when his peer group was  
19      beginning to get interested. He was -- he was avoidant. He  
20      avoided sexual intercourse. He had a bad feeling about it.  
21      He felt that there was something wrong with him. Girls would  
22      pressure him when he was, you know, having kind of sexual  
23      activity, why he wasn't more sexual, why he wasn't getting  
24      aroused.

25      Q.     You said girls. That would include something -- the

1 18-year-old episode, the girl, and Secil Blount. Were there  
2 any other girls?

3 A. I mean just girlfriends, girlfriends that he would have  
4 along the way.

5 Q. He described having girlfriends?

6 A. Yes, he described having girlfriends.

7 Q. And that they were trying to sexually arouse him and he  
8 was not interested?

9 A. Yeah, he was having trouble getting -- achieving --  
10 well, once he began to have sexual intercourse, he had sexual  
11 functioning problems. And, again, it's not very  
12 satisfactory. And I note it can be contentious, but one of  
13 the things we know about trauma is that sometimes you don't  
14 get the clear memory, you don't get a disclosure of the  
15 memory, what you get afterward are the imprints of it, of the  
16 behaviors. And for the purpose -- for clinical purposes  
17 that's often what matters is the imprint and how it impairs  
18 that person.

19 And he had many imprints early of sexual abuse that  
20 may have begun earlier with John Barnett that he can say, but  
21 also earlier in his upbringing with the Biggerstaffs and in  
22 Deborah Corder's home. So he had a lot of sexual functioning  
23 problems that came out in chosen relationships. These were  
24 peer initiated and developmentally appropriate sexual  
25 contacts that he had.

1 Q. I want to talk about something that Mr. Hawke raised.  
2 Lots and lots of evidence in this case about neglect,  
3 mistreatment, abandonment by his biological family. I want  
4 to try to get a better understanding of the total picture of  
5 trauma that would cause him to be insufficiently able to act  
6 independently, separately and apart from emotional, physical,  
7 sexual abuse and emotional -- all of the emotional issues  
8 that he suffered as a very young child.

9 It's my belief, and tell me if I'm wrong, that every  
10 human that ever lived has some trauma.

11 A. Yeah. They've changed the definition of "trauma" from  
12 something that's out of the ordinary, they've taken that  
13 definition out of it because these events in part are  
14 ubiquitous in human existence.

15 Q. And my impression in Mr. Hawke using the word  
16 "scaling," he was trying to get to determine some level of  
17 trauma concerning Mr. Barnett. What I would like to know, to  
18 the extent it's possible to learn that, is it possible to  
19 assess the degree of trauma he suffered from all of the  
20 various events of his life? Some people suffer trauma in  
21 their lives to the extent they become catatonic, they  
22 cannot -- they have totally lost connection with reality. I  
23 sense that's not what we're talking about with Mr. Barnett.

24 Is there some way to know the degree or level of --  
25 or can it be any way described as a degree of trauma that he

1 suffered pre the death of his grandparents? He obviously is  
2 able to function well in terms of his work with prison  
3 ministries, and the freedom he's been given in prison  
4 suggests that he is not the kind of person that has to be  
5 watched 24 hours a day, but is -- it may not be possible, I  
6 just am curious, is there any way to know how severe, is  
7 there any charts, is there any way to better define the level  
8 of the trauma that you believe he suffered?

9 A. Well, I'm thinking into the literature on the totality  
10 of events. And the way we do it in our field is we describe  
11 it as a dose response. So there's a curve of dose and  
12 response. And if we think of dose as the number of traumatic  
13 events and the type of traumatic events, what we do know is  
14 that there will be a point after which the number of  
15 traumatic events that a child experiences, they will  
16 inevitably have impairment and symptoms. Exactly what  
17 impairment, exactly what symptoms, and it says nothing about  
18 their recovery from them, we just know there is a  
19 relationship between dose and response.

20 There is also a relationship between types of trauma  
21 and the likelihood of impairment or symptoms afterwards. So  
22 childhood sex abuse, rape, exposure to combat, it's very --  
23 while people may recover from those, we find that the rates  
24 of impairment and symptoms after that are higher for some  
25 kinds of trauma.

1           So if we look at the dosage of trauma that David had  
2     and the periods at which they showed up and these occurred in  
3     his development, I can't see a time in his development from  
4     very early childhood when many physical and mental basic  
5     processes are getting laid down to the kinds of processes  
6     that happen, say, when they are in grade school or in early  
7     adolescence, in each of those periods of his development he  
8     was contending with experiences that were overwhelmingly  
9     maybe physically painful or emotionally confusing to the  
10    point where what we call psychological integrity is  
11    threatened. And those traumatic experiences kept happening.

12           So I would say given just the regular dose response  
13    curve, he would -- there's no surprise that he has impairment  
14    and symptoms. Given the kinds of traumas that he  
15    experienced, which were all interpersonal, it happens  
16    sometimes that I'll see these early traumas and then they'll  
17    have a series of what we might consider non-interpersonal,  
18    like motor vehicle accidents or a lot of physical accidents.  
19    He didn't seem to have many of those. So they all involved  
20    relationships with other people. And those are always more  
21    complicated when other people whom you're supposed to trust  
22    or with whom you're attempting to relate violate or betray  
23    that trust.

24           So if we add all of that up, I would say the  
25    impairment was inevitable; symptoms are inevitable for him.



1 And the severity of those symptoms is a function of how long  
2 they lasted, and the fact that one disrupted the next  
3 developmental stage. So if what he's supposed to be learning  
4 as an infant, learning just happens, getting close to people  
5 means safety, I go to people for safety, I begin to know who  
6 I am versus who the other person is, all these things that  
7 are very early, if that's disrupted by being shuffled from  
8 one caretaker to another, being the baby of no one, the child  
9 is going to adapt. Those adaptations he takes into the next  
10 stage of development, which is, I take care of myself however  
11 I can, in whatever way I can. And then I'm in a classroom  
12 with a teacher who tells me what to do, this doesn't work for  
13 me. That creates problems.

14 So the cumulative nature is greater than the sum of  
15 its parts. So I would say for David that that's a severe  
16 picture of trauma.

17 THE COURT: All right. Thank you. Court will be in  
18 recess for 15 minutes.

19 (Court in recess from 10 a.m. until 10:20 a.m.)

20 THE COURT: All set? You may call your next  
21 witness.

22 MR. SINDEL: Is Dr. Reynolds excused, Your Honor?

23 THE COURT: Yes. I'm sorry.

24 MR. SINDEL: Is it okay if she runs to the courtroom  
25 door so she can catch her flight?

1 THE COURT: Thank you.

2 THE WITNESS: Thank you.

3 MR. SINDEL: We recall Eric Barnett to the stand.

4 And this has a little to do with your --

5 THE COURT: Sure. You're still under oath. I took  
6 particular notes when you were testifying. I made some  
7 marginal notes about you being truthful and honest, and I'm  
8 confident that will continue.

9 MR. SINDEL: Thank you, Your Honor.

10 ERIC BARNETT,

11 Having been previously sworn, was examined and testified as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. SINDEL:

15 Q. Just for the record, Eric, you are Eric Barnett, right?

16 A. Yes.

17 Q. And you testified almost all morning yesterday; is that  
18 correct?

19 A. Yes, sir.

20 Q. Now, I'm going to show you what's been marked as  
21 Plaintiff's Exhibit S.

22 MR. SINDEL: And may I approach, Your Honor?

23 THE COURT: Yes, you may.

24 Q. And ask you, I know you don't recognize that because  
25 you didn't prepare it, but let me ask you a few questions.

1 Is there a date on that report?

2 A. September 26th, '96.

3 Q. And does it indicate what the subject matter of the  
4 report is?

5 A. A report of an interview with me.

6 Q. Okay. And do you recall -- and it also says where that  
7 interview took place. I believe it was Secil's house?

8 A. It was Secil's house in Kirkwood, yes, sir.

9 Q. And do you remember actually being interviewed prior to  
10 David's trial? Just take a look at it and see if that's  
11 consistent with some of the things you were asked about.

12 A. I really -- I really don't recall being interviewed  
13 before the trial about certain subjects.

14 Q. But I'm asking you if you recall being interviewed  
15 around the time of that date, not about the subject matter.

16 A. Yes, I do.

17 Q. Okay. And was Kris present during the course of that  
18 interview?

19 A. No, he was not.

20 Q. Now, that's my notes, and there's a couple little  
21 underlines and everything. I think if you look on page 2, is  
22 there a page there where I've scratched out Kris's name and  
23 wrote your name in -- or page 3?

24 A. Yes, sir, page 3.

25 Q. Now, was the entire interview done of you as far as

1     you're concerned?

2     A.     Yes.

3     Q.     And so when the interviewer notes "Kris" on there,  
4     would that be basically what you understand is a typo or a  
5     mistake?

6     A.     Yes.

7     Q.     And there are I think three times in that report where  
8     it refers to Kris. But is that actually information that you  
9     gave to them?

10    A.     No.

11    Q.     The items that were indicated by Kris? Let me rephrase  
12    the question. Under the -- when they are talking and they  
13    use the name Kris, are those things that you actually told  
14    them and not Kris as far as you can recall?

15    A.     Yes.

16    Q.     Okay. And were you basically answering the questions  
17    that they asked you during the course of that interview?

18    A.     Yes.

19    Q.     And there were certain subjects that they apparently  
20    didn't ask you about and you didn't reveal in this interview?

21    A.     Definitely.

22           MR. SINDEL: Your Honor, I would move the  
23    introduction of Plaintiff's Exhibit S.

24           MR. HAWKE: No objection.

25           THE COURT: Received.

1 BY MR. SINDEL:

2 Q. And then one final question. When you were sitting on  
3 the lap of John Barnett, did you notice whether he would have  
4 an erection as he fondled you?

5 A. Yes, he did.

6 MR. SINDEL: That's all I have.

7 MR. HAWKE: No questions.

8 THE COURT: You may step down. Thank you, sir.

9 MS. HARMS: The petitioner calls Shelby Crossen.

10 SHELBY CROSSEN,

11 Having been first duly sworn, was examined and testified as  
12 follows:

13 DIRECT EXAMINATION

14 BY MS. HARMS:

15 Q. Good morning.

16 A. Good morning.

17 Q. Could you introduce yourself to the Court.

18 A. Shelby Crossen.

19 Q. And where do you live, Ms. Crossen?

20 A. Rockford, Illinois.

21 Q. And how long have you lived there?

22 A. Since I was in third grade, all my life.

23 Q. Okay. And do you know Shirley Pullen?

24 A. She's my older sister.

25 Q. And when we're talking today, we're going to be talking

1     mainly about your sister Shirley, not your mother Shirley,  
2     just to distinguish that.

3     A.     Yes, ma'am.

4     Q.     And is she your oldest sister?

5     A.     Yes, she's my only sister.

6     Q.     Okay. Is Shirley the oldest in the family?

7     A.     Yes, ma'am.

8     Q.     Could you tell me who your other siblings are, and if  
9     you could in order from oldest to youngest?

10    A.     It's Shirley, Charlie, Randy, me, Richard, and Pete.

11    Q.     Okay. And some of your siblings have different fathers  
12    from you, correct?

13    A.     Yeah.

14    Q.     Okay. Was there ever a time in your life when you came  
15    to live with Shirley periodically after she moved out of the  
16    family home?

17    A.     Yeah, from age 10 to 13.

18    Q.     And was that in St. Louis?

19    A.     Yes, ma'am.

20    Q.     Okay. And what were the circumstances of why you were  
21    staying with Shirley in those summers?

22    A.     I'd go down to stay with my dad, but my step-mom was a  
23    really mean woman, and she didn't want us around because we  
24    were mom's kids, so I'd stay with Shirley when I was there.

25    Q.     And when you say your father, you're referring to your

1 father, Wilbur?

2 A. Yeah.

3 Q. Okay. So this happened that you stayed approximately  
4 three summers with Shirley?

5 A. Yes, ma'am.

6 Q. And did Shirley have kids living with her that first  
7 summer that you stayed with her?

8 A. Billy and Toni.

9 Q. And approximately how old were they?

10 A. Toni was two and Billy was four.

11 Q. What were your summers like with Shirley? I mean, how  
12 would you spend your time?

13 A. Baby-sitting the kids and taking care of her house.

14 Q. When you were baby-sitting the kids, how frequently was  
15 this that you were taking care of the kids?

16 A. I had them every day or every other day.

17 Q. What was Shirley doing while you were taking care of  
18 the kids?

19 A. She was out partying.

20 Q. When you say "out partying," do you mean drinking?

21 A. Drinking, doing drugs.

22 Q. Okay. What was the condition of the house that Shirley  
23 was living in?

24 A. There was --

25 MR. HAWKE: Objection, Your Honor, on the basis of

1 relevance. I'm not sure what years we're dealing with and  
2 where David Barnett is.

3 MS. HARMS: Billy Bye's testimony was that David did  
4 spend some time with Shirley under the age of five  
5 approximately. So I think the condition of her house is  
6 relevant to what kind of mother she was when David was  
7 spending time with her.

8 THE COURT: I think the objection was wanting to  
9 know specifically when it was that Ms. Crossen was living  
10 there to know whether at that time David was alive or where  
11 he was.

12 MS. HARMS: Okay. So sustained or --

13 THE COURT: I'm sorry?

14 MS. HARMS: Was the objection sustained?

15 THE COURT: Well, yes, I think so. I'm not so much  
16 interested in that, as also for my notes, it largely becomes  
17 irrelevant unless I know how David fits into the situation.  
18 I don't know when it was that Ms. Crossen left a  
19 dysfunctional home to live with Shirley for awhile. I know  
20 that Billy and Toni were living there, but that's all I know.  
21 It would be helpful to know the year, and that may all be  
22 coming, when David was born and all that. So I guess we'll  
23 get there soon enough. So, okay, sustained.

24 BY MS. HARMS:

25 Q. How often did Shirley go out drinking and leave you



1 with the kids?

2 A. Every day or every other day.

3 Q. Was Shirley an alcoholic?

4 A. Yes.

5 Q. How old was she when she began drinking?

6 A. Fourteen.

7 Q. And so you actually witnessed her being drunk?

8 A. Yes, ma'am.

9 Q. What was she like when she was drunk?

10 A. Mean.

11 Q. Can you explain?

12 A. She -- she'd be abusive physically, verbally.

13 Q. When you say "physically abusive," what does that mean  
14 to you? Can you give me examples. Take your time.

15 A. She'd be physically abusive to the kids and me.

16 Q. I'm sorry?

17 A. She would make -- she'd whip on the kids. She'd smack  
18 them in the head, smack them in the face.

19 THE COURT: Okay. Wait, I'm having trouble hearing.  
20 Could you get real close to the microphone?

21 THE WITNESS: I'm sorry.

22 THE COURT: That's okay.

23 A. She'd be physical, really physical abusive with the  
24 kids. I mean, she would smack them in the head, smack them  
25 in the face, whip them with a belt, you know, with a

1 racetrack, a Hot Wheels racetrack.

2 Q. And this racetrack would do some damage?

3 A. It would leave welts, yes, ma'am.

4 Q. Did she ever drink at home in the front of the kids?

5 A. Yes.

6 Q. What was her drink of choice?

7 A. Busch beer and Jack Daniels.

8 Q. Did she have parties at the house?

9 A. Yes, ma'am.

10 Q. And was there drinking around the kids?

11 A. Yes.

12 Q. Were people doing drugs at the house?

13 A. Yes.

14 Q. Did you ever personally witness some of this drug  
15 activity?

16 A. Yes, ma'am. They used to huff paint thinner in a bread  
17 bag. I found her and Bruce snorting cocaine in the bathroom.  
18 I seen them eating paper, which back then I didn't know what  
19 it was until I was older, and I found out it was acid.

20 Q. Okay. So they would come home from the bars drunk?

21 A. Yes.

22 Q. And they would wake you up?

23 A. Me and the kids, yes, ma'am.

24 Q. What were Shirley's relationships like with men?

25 A. She -- she had quite a few of them. The main two that

1 I was around when I was there was Aaron Cook and Bruce.

2 Q. What was Aaron Cook like?

3 A. He was mean. He was mean to her and the kids.

4 Q. Would he physically abuse the children?

5 A. Yeah, he liked to whip them with a belt, a racetrack,  
6 wooden spoon.

7 Q. And you personally saw this?

8 A. Yes, ma'am.

9 Q. Would he hit Shirley?

10 A. Yes, he -- I seen him hit her quite a few times.

11 Q. Would Shirley ever hit him back?

12 A. I seen her once, she tied him to the bed and beat him  
13 with a brush.

14 Q. And Aaron eventually ended up in prison?

15 A. Yes, ma'am.

16 Q. Okay. So when Shirley was hitting the kids, we're not  
17 talking about just smacks to the butt, are we?

18 A. No. I mean, it went to extremes, it did. She left  
19 marks on them to where it wasn't just on their diaper.  
20 They'd have marks on their backs, on their legs.

21 Q. And would you sometimes get hit when you tried to  
22 intervene?

23 A. Yes. She punched me in the face a couple times from  
24 trying to stop her from whipping the kids.

25 Q. What was Shirley's care of the children like?

1 A. She didn't take care of them, I did. I gave them their  
2 baths. I changed their diapers.

3 Q. Did you see the children sometimes running around in  
4 dirty diapers?

5 A. Yes, ma'am.

6 Q. Shirley wouldn't bathe the children?

7 A. No.

8 Q. Did she show affection to her kids?

9 A. No, ma'am.

10 Q. Was she interested in her children?

11 A. Nope.

12 Q. What was her main interest in life?

13 A. Drinking and doing drugs.

14 Q. Shirley at one point was with a man named Michael  
15 Acree?

16 A. Mike Acree, yeah.

17 Q. Was he an alcoholic?

18 A. Yes, ma'am.

19 Q. Was he a daily drinker?

20 A. Yes.

21 Q. And what was his drink of choice?

22 A. Beer and Jack Daniels.

23 Q. Did he ever hit the kids?

24 A. Yeah, he used to grab them up by their arm and hit them  
25 with a belt.

1 Q. Did you enjoy staying with Shirley?

2 A. Nope.

3 Q. Were you around Shirley when she was pregnant ever?

4 A. Just when she was pregnant with Bradley.

5 Q. Did you see her ingest any substances when she was  
6 pregnant with Bradley?

7 A. She smoked marijuana.

8 Q. Was there something that happened that caused you to  
9 stop visiting Shirley in the summers?

10 A. My mom wouldn't let me go back down there. When I was  
11 13, she and Bruce and some of their friends came home from  
12 the bar, and I woke up with a guy on top of me. That's when  
13 I lost my viraginity.

14 Q. Did you tell -- go ahead.

15 A. I ended up pregnant when I was 13.

16 Q. Did you tell Shirley what had happened?

17 A. Yes.

18 Q. Did she express remorse or sorrow?

19 A. No.

20 Q. Did you avoid Shirley after that?

21 A. Yep. I didn't see her again until I was 16.

22 Q. And is that when Shirley moved back to Rockford from  
23 St. Louis?

24 A. Yeah.

25 Q. Was there a time then in Rockford when Shirley and her

1 kids were living with you, your mom, Chuck, and your husband  
2 Chuck and your children?

3 A. Yes, ma'am.

4 Q. Had Shirley's drinking behavior changed by then?

5 A. No.

6 Q. Had her treatment of the children changed?

7 A. She never really -- she never really had anything to do  
8 with the kids then because mom was there, and mom always took  
9 care of the kids.

10 Q. Did Shirley ever have mood swings?

11 A. Yes, she -- she'd go from being happy-go-lucky one  
12 minute to screaming and hollering the next and to where the  
13 neighbors could hear her, people outside could hear her.

14 Q. Did she seem to get angry for no reason?

15 A. Yes, ma'am.

16 Q. Would these screaming and the mood swings, would they  
17 happen when she was sober?

18 A. Yeah.

19 Q. And also when she was drunk?

20 A. Both.

21 Q. Did there come a time when you learned that Shirley had  
22 given custody of all her children up except Bradley to the  
23 State?

24 A. Yes, ma'am, Christmas --

25 MR. HAWKE: Objection, Your Honor, we're -- counsel

1 is leading the witness.

2 THE COURT: Okay. There was some leading, but this  
3 question didn't. She was asking sort of changing the pace  
4 here. Was there a time when Shirley gave custody of all the  
5 children up except Bradley to the State. So overruled. That  
6 is a fact question.

7 A. So answer it?

8 Q. Yes.

9 A. Okay. Yeah, Christmas Eve of 1984. Mike gave her the  
10 ultimatum that she give up the kids or --

11 MR. HAWKE: Objection, hearsay.

12 THE COURT: Yeah, maybe. Could you rephrase the  
13 question?

14 MS. HARMS: I'll rephrase. Sure.

15 THE COURT: The only question before you now is was  
16 there a time when she gave them up?

17 A. Okay. Christmas Eve of 1984.

18 Q. What was your reaction when you heard that Shirley gave  
19 the kids up?

20 A. I -- I told her she should have brought them to me and  
21 Chuck first so that we could have figured something out.

22 Q. Did your mother consider taking the children?

23 A. Mom would have took them, but mom was tied up with DFS  
24 at the time because my little brother Pete had set himself on  
25 fire. He'd gotten hold of a lighter and caught his self on

1 fire, so they wouldn't let mom have them.

2 Q. So Richard and Pete had been placed in foster care and  
3 that's why?

4 A. Yes, ma'am.

5 Q. Did the six children of Shirley, did they have  
6 different fathers?

7 A. Billy's dad is Tom. I'm not -- I never knew what  
8 David's dad's name was. Toni and Grant's dad is Aaron.  
9 Michael's dad is Bruce.

10 THE COURT: Wait, just a second. I want to get this  
11 down. So Billy's father is Tom. David, you're not sure.  
12 And then I think you said --

13 THE WITNESS: Toni and Grant, their dad is Aaron  
14 Cook.

15 THE COURT: Okay. Aaron, okay, just a second.  
16 Okay. Go ahead.

17 THE WITNESS: Michael's dad, his name is Bruce. And  
18 Bradley's dad is Mike Acree.

19 BY MS. HARMS:

20 Q. I want to move now to talk a little bit about the  
21 Pullen side of the family.

22 A. Yes, ma'am.

23 Q. Was there any alcoholism in that side of the family?

24 A. The whole Pullen side was alcoholics.

25 Q. When you say that, are talking about your dad?



1 A. My dad, my Uncle Wendall, my Uncle Joe, my Uncle  
2 George, my Aunt Mary, my Grandpa Pullen.

3 Q. And do you have pictures of the Pullen family together?

4 A. I have a picture of my dad and my uncles together, yes.

5 Q. And what is always present in those pictures?

6 A. Cans of beer.

7 Q. What signs of alcohol use did you see in your dad's  
8 house?

9 A. They'd always have cases of beer stacked in the corner.  
10 My step-mom would get up and start drinking as soon as she  
11 got up every morning. My dad would wait till around noon  
12 hour before he'd start drinking, and he'd drink the rest of  
13 the day.

14 Q. So we're talking heavy daily drinking?

15 A. Yes, ma'am.

16 Q. Okay. And what was your Aunt Mary like?

17 A. She was paranoid. She was -- she was a drunk. I mean,  
18 she was an alcoholic too. And she had -- she was real  
19 paranoid about things, like people would be in her house or  
20 she'd be hearing things and hearing people that weren't  
21 there.

22 Q. Did your dad want you around your Aunt Mary?

23 A. No.

24 Q. Was he concerned about her behavior?

25 A. Yes.

1 Q. Would she scream and yell?

2 A. Yes, ma'am.

3 Q. Okay. Did you have a -- did your mother have a sister  
4 named Claudette?

5 A. Yes, ma'am.

6 Q. Was she a heavy drinker?

7 A. Yes, ma'am.

8 Q. Okay. And what was her relationships like with men?

9 A. She was married seven times.

10 Q. And what was her personality like?

11 A. She was also real paranoid. She would have really bad  
12 mood swings to where she would scream and holler and she  
13 would think people was in her house watching her and hearing  
14 voices and hearing people that weren't there.

15 Q. What happened to your Uncle Wendall?

16 A. He went to the bar and was drinking and he got shot.  
17 And he pulled into the front yard and he got out of the car  
18 and he walked up to the porch and he died in the yard.

19 Q. And you actually witnessed him die in front of you?

20 A. Yes, ma'am.

21 Q. And you were pretty little?

22 A. I was six, seven.

23 Q. And did -- your mom had an Uncle Gene?

24 A. That was my mom's brother, my Uncle Gene.

25 Q. Did he also meet a violent death?

1 A. Yes, he got killed when he was 15. He was with a  
2 friend and they were looking at his friend's father's  
3 shotgun. They didn't know it was loaded. The friend pulled  
4 the trigger. And it went in his left side -- went in his  
5 right side, came out his left side and took the whole bottom  
6 of his heart off.

7 Q. Now, Shirley's third oldest child Toni, she was later  
8 adopted and now goes by the name Jessica?

9 A. Yes, ma'am.

10 Q. Have you had some contact with her as an adult?

11 A. I never had any contact with her until January of this  
12 year when I went down to take care of my mom when she passed  
13 away.

14 Q. Do you know if Jessica has any problems with  
15 alcohol?

16 A. Yes, ma'am. I went to Bowling Green with her when I  
17 was down there, which you have to go to because my mom lived  
18 in a dry county. And she bought a gallon of whiskey. And we  
19 were going down the street and she was having me pour her  
20 shots in a plastic cup from the gas station.

21 Q. Do you know if Bradley, Shirley's youngest child, has  
22 problems with alcohol?

23 A. He has a really bad problem with alcohol.

24 Q. Do you have any specific examples of that?

25 A. He got drunk on vodka not too long before I went down

1       there and he walked -- he was living in my brother Richard's  
2       trailer. He walked into the trailer next door and told the  
3       people to get the hell out of his house.

4       Q.       In other words, he mistook the neighbor's trailer for  
5       where he was staying?

6       A.       Yes. And they had to call the police and have him  
7       removed, and he lost his job over it.

8       Q.       Does Bradley have a particular fascination with fire?

9       A.       Yes, ma'am. He caught the apartment -- he caught the  
10      apartment on fire that they lived in when my mom lived in  
11      Paragould, Arkansas. That Shirley, Mike, and Bradley lived  
12      in the apartment next door to mom, and Bradley caught that  
13      apartment on fire. So they moved out of there, and they  
14      moved into a trailer that my Aunt Claudette and my Uncle Dave  
15      owned, and Bradley burned that trailer down.

16      Q.       Have you yourself ever been diagnosed with any mental  
17      disorder?

18      A.       Anxiety and depression, and I have epilepsy.

19      Q.       Are you on SSI for your mental disorder?

20      A.       Yes, ma'am.

21      Q.       And you're on medication for it?

22      A.       Yes, I'm on Seroquel for anxiety. I take Prozac for  
23      depression. And Depakote for epilepsy.

24              MS. HARMS: I have no further questions, Your Honor.

25              THE COURT: All right. Mr. Hawke.

## CROSS-EXAMINATION

BY MR. HAWKE:

Q. Good morning.

A. Good morning.

Q. I have a few questions that I need to ask you this morning.

A. That's fine.

Q. And if you -- if I don't speak loudly enough or clearly enough, just ask me to repeat the question, I'm happy to do so.

A. Okay.

Q. Can you tell the Court the year you were born?

A. 1965.

Q. 1965. And when you lived with Shirley, that was when you were ages 10 to 13?

A. Yes, sir.

Q. Okay. So that would have been between 1975 and 1978?

A. Yeah.

Q. Okay. And the children you remember being there were two children, one named Billy and one named Toni?

A. Yes, sir.

Q. And the information you gave the Court this morning concerned those two children?

A. Yes.

Q. Okay. And the time that you were discussing Shirley

1 giving up the children, that was at Christmas time in 1984?

2 A. Christmas Eve 1984.

3 Q. And that was in Rockford, Illinois?

4 A. Yes, sir.

5 Q. And that concerned which children?

6 A. It was Billy, Toni, Grant, and Michael.

7 Q. Okay.

8 THE COURT: Billy, Toni, Grant, and --

9 THE WITNESS: Michael.

10 THE COURT: Got it. Thank you.

11 BY MR. HAWKE:

12 Q. And from -- you gave us a lot of information about the  
13 Pullen family this morning.

14 A. Yes, sir.

15 Q. None of that information -- can you tell the Court if  
16 David Barnett ever observed any of those stories?

17 A. I can -- I have never met David. Whether -- whatever  
18 contact that Shirley had with David, I was not there. I  
19 couldn't tell you. I have no clue.

20 Q. That's fine. So just to say the obvious, David Barnett  
21 did not see Toni drink whiskey in Bowling Green?

22 A. No.

23 Q. Okay. And, again, just to state the obvious, David  
24 didn't see Bradley drunk on vodka and at the wrong trailer?

25 A. No.

1 Q. And David didn't see Bradley set fire to apartment the  
2 or trailers?

3 A. No.

4 Q. No. Okay.

5 MR. HAWKE: That concludes my questions.

6 MS. HARMS: She can be excused. I don't have any  
7 further questions.

8 THE WITNESS: Oh, I can go?

9 MS. HARMS: We call Kathy Burkett.

10 THE COURT: Thank you, ma'am.

11 THE WITNESS: Thank you. Kathy Burkett.

12 KATHY BURKETT,

13 Having been first duly sworn, was examined and testified as  
14 follows:

15 DIRECT EXAMINATION

16 BY MS. HARMS:

17 Q. Good morning.

18 A. Good morning.

19 Q. Can you state your name again one more time for the  
20 record?

21 A. Kathy Burkett.

22 Q. And how old are you, Ms. Burkett?

23 A. Fifty-four.

24 Q. Okay. And where do you live?

25 A. Rockford, Illinois.

1 Q. Okay. And how long have you lived there?

2 A. All my life.

3 Q. Okay. Are you currently employed?

4 A. Yes.

5 Q. And you've never testified before?

6 A. No.

7 Q. Do you know Shirley Pullen?

8 A. Yes.

9 Q. When I say "Shirley," I'm talking about --

10 A. Junior.

11 Q. -- Junior. But you also knew Shirley's mother?

12 A. Yes.

13 Q. How do you know Shirley?

14 A. Through my cousin Shelby. Well, she was married to my  
15 cousin, Shelby.

16 Q. Shelby was married to Chuck Armstrong, who was your  
17 cousin?

18 A. Yes.

19 Q. How old were you roughly when you met Shirley?

20 A. Middle twenties about.

21 Q. Okay. And was there a time when you lived close to  
22 her?

23 A. Yes, she lived kitty-corner behind me.

24 Q. And did you spend a lot of time with each other?

25 A. A couple times a week.



1 Q. You spent time in each other's homes?

2 A. Well, I tried stay out of her home. I'd go over there  
3 once in awhile, but I wouldn't stay very long. So I'd have  
4 her come to my house.

5 Q. Did you know Shirley's children?

6 A. Yes.

7 Q. What was Shirley's care of the children like?

8 A. Not good.

9 Q. When you say "not good," could you explain why you say  
10 that?

11 A. Well, she wasn't a very good housekeeper. She had  
12 dirty dishes all the time. Her garbage was overflowing. The  
13 two youngest ones hardly ever got their diaper changed.

14 Q. Would they be walking around with their diapers full?

15 A. Yeah.

16 Q. Leaking out?

17 A. The pee would be going down their legs.

18 Q. What was Shirley's personal hygiene like?

19 A. Not good.

20 Q. Did she smell?

21 A. Yeah.

22 Q. Did she bathe the children regularly?

23 A. No.

24 Q. Were they dirty?

25 A. Yes.

1 Q. Did the younger children have proper clothes?

2 A. No, they ran around in diapers all the time.

3 Q. Even in the winter?

4 A. Even in the wintertime.

5 Q. No shirts on?

6 A. No.

7 Q. Were there any insects in the house?

8 A. Yes, ma'am, there was cockroaches. The two youngest  
9 ones had lice. I didn't check the older ones because -- I  
10 really shouldn't have checked the little ones. But, yes,  
11 they had lice. And I went to pick up Grant out of the crib,  
12 and he was soaking wet and had a cockroach crawling in his  
13 ear.

14 THE COURT: Who did you get from the crib?

15 THE WITNESS: Pardon?

16 THE COURT: Which child?

17 THE WITNESS: The youngest one, Grant.

18 BY MS. HARMS:

19 Q. And you had children yourself?

20 A. Yes, three.

21 Q. Were you shocked by the conditions in her home?

22 A. Yes.

23 Q. Did you ever see Shirley show affection towards her  
24 kids?

25 A. No.

1 Q. Did Shirley ever watch your children?

2 A. No.

3 Q. And why is that?

4 A. Because I didn't like the way she raised hers. I  
5 didn't like -- I'm scared she wasn't going to clean them or  
6 feed them.

7 Q. Did the children spend a lot of time in the care of  
8 Shirley's mother?

9 A. Yes.

10 Q. Okay. And was this because Shirley didn't want them  
11 around?

12 A. Yes.

13 Q. Did you ever know Shirley to hold down a job?

14 A. No.

15 MR. HAWKE: Objection on the basis of foundation for  
16 that, how she knew what Shirley's emotional state was.

17 THE COURT: Oh, okay. Well, sustained. If you want  
18 to lay a foundation about what she observed.

19 BY MS. HARMS:

20 Q. Was the family on welfare?

21 A. Yes.

22 Q. Was the family on food stamps?

23 A. Yes.

24 Q. Were there times not enough food in the house?

25 A. Yes.

1 Q. Did you ever do anything to try to rectify that?

2 A. I helped them when I could. I wasn't rich either, and  
3 I would bring them food. And I would make sure I'd tell  
4 Shirley that her and Michael, her boyfriend Mike, wouldn't  
5 eat it, I'd say, "Make sure the kids get that food."

6 Q. I want to move on now to a particular event, Christmas  
7 time 1984. Do you recall something happening with Shirley  
8 and her children around that time?

9 A. Yes.

10 MR. HAWKE: Objection, Your Honor, this story  
11 doesn't relate to David Barnett.

12 THE COURT: Overruled. I'll hear it.

13 BY MS. HARMS:

14 Q. What happened?

15 A. Shirley came to my house and asked me if I could take  
16 her children to the children's home.

17 Q. Did that shock you?

18 A. Yes. I tried talking to her two or three hours, asking  
19 her why. And she said she just couldn't handle it anymore.

20 Q. Did she seem emotional about the decision?

21 A. No.

22 Q. Was she struggling with it?

23 A. No.

24 Q. Was she crying?

25 A. No.

1 Q. Were you crying?

2 A. I am now.

3 Q. Why did she need your help?

4 A. I had a car. She didn't have a car. And just asked me  
5 to drop them off. She rode with me.

6 Q. So did you spend some time trying to talk her out of  
7 it?

8 A. Yes, I did.

9 Q. Was she going to give up all of her children?

10 A. Four of them. She kept Bradley.

11 Q. And was it your impression that she was keeping Bradley  
12 because of Bradley's father, Michael?

13 A. I think he kind of forced her into getting rid of them.  
14 He gave her an ultimatum like --

15 MR. HAWKE: Objection, hearsay.

16 THE COURT: Yes, I think so. Sustained.

17 BY MS. HARMS:

18 Q. Did Shirley ever consider giving the children to her  
19 mother or Shelby?

20 A. Not that I know of. She never mentioned it.

21 Q. So you finally agreed to drive the children?

22 A. I did it for their own good.

23 Q. Did Shirley pack any bags for the kids?

24 A. Nothing, not a bag, not a toy, nothing.

25 Q. Did Shirley tell the kids good-bye?

1 A. No.

2 Q. Did she hug them?

3 A. Nope.

4 Q. Did she cry?

5 A. Nope.

6 Q. Did you cry?

7 A. Yeah.

8 Q. Did the kids understand what was going on?

9 A. No.

10 Q. You said it was for their own good. What did you mean  
11 by that?

12 A. Well, I'm not the best mother in the world myself, but,  
13 you know, they weren't getting fed right, they weren't  
14 getting clean, their house was nasty. She wasn't lovable.  
15 She was mean -- I mean, not mean, but I don't know how to put  
16 it. She was not --

17 Q. Affectionate?

18 A. -- good affectionate. And I thought maybe if they had  
19 some foster parents or something to take care of them better,  
20 maybe they'll have a life, you know.

21 Q. At some point after this did you lose touch with  
22 Shirley?

23 A. Yes, I did.

24 Q. Was it because this event changed your opinion of her?

25 A. Yes.

1 MS. HARMS: I have no further questions. Thank you.

2 THE COURT: Mr. Hawke.

3 CROSS-EXAMINATION

4 BY MR. HAWKE:

5 Q. Good morning.

6 A. Good morning.

7 Q. The Christmas 1984 event, which of the children did  
8 Shirley give up?

9 A. Billy, Toni, Michael, and Grant.

10 Q. And at that time you were of the opinion that it might  
11 be for their own good?

12 A. Yes.

13 Q. And the time that you had contact with Shirley, the  
14 beginning of your testimony, what years were you discussing,  
15 was it like 1946 or 1985?

16 A. When I dropped the children off?

17 Q. At the beginning of your testimony you said that you  
18 knew Shirley, and that you would come to her house twice a  
19 week.

20 A. Okay.

21 Q. What year or years are we talking about?

22 A. Well, I got to figure that out. I would say I was 24,  
23 so that was probably 30 years ago. Nineteen -- I can't think  
24 right now.

25 THE COURT: That's all right. Take your time.

1 Q. Take your time. We got all day.

2 THE COURT: Well, the incident with the children was  
3 Christmas 1984.

4 THE WITNESS: Right, '84.

5 THE COURT: So how much time before that did you  
6 know Shirley?

7 THE WITNESS: Shoot, about -- I don't really -- ten  
8 years maybe.

9 BY MR. HAWKE:

10 Q. Let's think about it a little bit differently. Let me  
11 withdraw that question and we'll approach it a different way.  
12 You said that you lived catty-corner from Shirley?

13 A. Right.

14 Q. When did you live in the house that was catty-corner  
15 from Shirley?

16 A. '82.

17 Q. '82, okay. And how long did you live in that house  
18 catty-corner from Shirley?

19 A. My husband and I lived there for a year -- no, I'm  
20 sorry, it was -- yeah, it was probably two years, two years.  
21 I've moved so much. I'm sorry.

22 Q. So the time period that you were describing Shirley's  
23 home then was about from 1982 to 1984?

24 A. Uh-huh.

25 Q. Okay. And the children that you saw at Shirley's home



1 were the four children that she eventually gave up?

2 A. Yes.

3 Q. Okay. No others?

4 A. Well, Michael.

5 Q. Oh, Michael --

6 A. I mean Bradley, Michael's baby.

7 Q. And that was Bradley Acree; is that correct?

8 A. Yes.

9 MR. HAWKE: That's all the questions I have.

10 THE COURT: All right. Redirect.

11 REDIRECT EXAMINATION

12 BY MS. HARMS:

13 Q. Just to clarify, did you know Shirley before you lived  
14 in the house catty-corner to her?

15 A. Yes.

16 Q. So there was a time period prior to 1982 when you knew  
17 Shirley also?

18 A. Yes. That's where the house was real bad where she  
19 lived when I first met her.

20 Q. So you knew what her housekeeping was like in other  
21 houses?

22 A. Yes.

23 Q. And it was the same?

24 A. All the same.

25 MS. HARMS: No further questions. Thank you.

1 THE COURT: I have just a couple. Shirley was  
2 married to Shelby's husband?

3 THE WITNESS: No, Shelby Crossen was married to my  
4 cousin Chuck Armstrong.

5 THE COURT: Okay. Just a second.

6 THE WITNESS: And that's how I met Shirley, through  
7 Shelby.

8 THE COURT: Would you right into the microphone  
9 really slowly tell me how that relationship is, okay.

10 THE WITNESS: I met Shirley through Shelly Crossen.  
11 She was married to my cousin, Chuck Armstrong.

12 MS. HARMS: Shelby is Shirley's sister?

13 THE WITNESS: Yes.

14 THE COURT: Okay. And Shelby was married to your  
15 cousin, Chuck Armstrong?

16 THE WITNESS: Right.

17 THE COURT: I have it now. Okay. Got it.

18 MS. HARMS: Thank you.

19 THE COURT: Thank you.

20 THE WITNESS: Okay. Thank you.

21 MS. CARLYLE: Call Rita Reames.

22 RITA REAMES,  
23 Having been first duly sworn, was examined and testified as  
24 follows:

25 DIRECT EXAMINATION

1 BY MS. CARLYLE:

2 Q. Will you tell us your name, please.

3 A. My name is Rita Reames.

4 Q. And where do you live, Ms. Reames?

5 A. Currently I reside in Cecilia, Kentucky.

6 Q. And about how long have you lived there?

7 A. Three years.

8 Q. Okay. And during that time have you been involved in  
9 any work relating to children?

10 A. Yes. I am a court appointed special advocate, which is  
11 called CASA for short. It's a program where I volunteer and  
12 advocate for children already in the system for abuse,  
13 neglect, or other needs.

14 Q. And what drew you to that program?

15 A. My experience with David Barnett, and his experience  
16 with Family Services.

17 Q. So you know David Barnett?

18 A. Yes.

19 Q. Okay. And how do you know him?

20 A. My husband and I were his foster parents for about six,  
21 seven months.

22 Q. And was that in 1983?

23 A. Yes.

24 Q. How old was David Barnett at that point?

25 A. When he came to us he was six, six and a half. And

1 when he left was shortly after his seventh birthday.

2 Q. And what was his last name when he was with you?

3 A. Pullen.

4 Q. How did that placement with you come to an end?

5 A. I was a student. I had gone back to school. And when  
6 we were asked by Family Services to take David Barnett, or  
7 Pullen at the time, I told them that I'd be glad to do so,  
8 but I was in school. And they said no problem. And so he  
9 came to live with us.

10 Q. But how did the placement end?

11 A. Oh, it ended because, as I said, I was in school, and I  
12 received an opportunity to be part of an exchange program, so  
13 I was accepted, and my husband and I and our two biological  
14 children went to England to take advantage of that  
15 opportunity.

16 Q. And when was your next contact with David Barnett after  
17 that?

18 A. During the penalty phase of his trial, 1996 or whenever  
19 it was.

20 Q. Let's go back to 1983. Where did you and your family  
21 live at that point?

22 A. We had a home on Olivaire Lane in Olivette, Missouri.

23 Q. And who lived there in your home?

24 A. My husband, myself, our biological children, and then  
25 David.

1 Q. And how many biological children do you have?

2 A. Two, a son and a daughter.

3 Q. Had you and Mr. Reames been foster parents before?

4 A. Yes, David was our third foster child.

5 Q. When David Barnett came to you as a foster child, what  
6 were you told about his past history?

7 A. DFS told us virtually nothing.

8 Q. And was that something that happened with the other  
9 foster children you had also?

10 A. Yes, it was my understanding that that was their  
11 policy.

12 Q. When -- was David Barnett able to fit into the routines  
13 at your home?

14 A. Yes. It didn't take him very long at all to become  
15 part of the family. He enjoyed our children. He enjoyed  
16 being part of the family unit.

17 Q. What were some of the routines you remember him  
18 enjoying or being involved in?

19 A. Well, we all had different schedules during the day,  
20 but at night we had dinner together. We always read bedtime  
21 stories. And David really liked that because we'd all sit  
22 together to do that. Afterward was teeth brushing, pajamas,  
23 and getting tucked into bed with a kiss and a hug every  
24 night.

25 Q. So tell me about the reading routine. Where would you

1 do that?

2 A. Usually on a sofa so there was room for everybody. You  
3 know, we'd all be piled up there together taking turns.  
4 Sometimes my husband read, sometimes I read. The kids  
5 sometimes picked out a book. But we did it as a group.

6 Q. So did David enjoy sitting with the family and  
7 snuggling?

8 A. Yes. He always wanted to be next to somebody, and he  
9 always was.

10 Q. Did you -- did you and your family take David with you  
11 to church?

12 A. Yes, we went every week to Clayton United Methodist  
13 Church.

14 Q. Do you remember anything that David seemed to be  
15 frightened about or worried about while he was with you?

16 A. David sometimes would flinch like he was anticipating  
17 being hit, although we never did strike him in any way for  
18 any reason. But that began to ease away. He was a little  
19 frightened of storms, of dark -- of the dark, of being alone.  
20 Many things really, but nothing debilitating. He was able  
21 with our help to function and be happy.

22 Q. But you did notice he had some of those fears that must  
23 have come from something that happened before he got to you?

24 A. Absolutely. Absolutely, yeah.

25 Q. Okay. Was David in any kind of therapy or counseling

1 while he was with you?

2 A. Yes, we took him to counseling. I can't recall the  
3 frequency, but it seems like it was once a week.

4 Q. And did you and your family participate in that  
5 counseling or was it just his counseling?

6 A. It was just for David.

7 Q. Did he seem to object to going to that counseling in  
8 any way?

9 A. No, he never seemed to protest or mind in any way. He  
10 cooperated.

11 Q. Did he share anything with you about it?

12 A. No, not really.

13 MS. CARLYLE: I think Mr. Sindel may have absconded  
14 with some of my exhibit stickers. Let me see what I can do.  
15 Are we ready for Exhibit T? Is that right?

16 THE COURT: The last one I recall was S.

17 MS. CARLYLE: Okay. Then I'm going to mark T, U, V,  
18 and W. I'll show Mr. Hawke.

19 THE COURT: What's the number?

20 MS. CARLYLE: I have marked four exhibits, T, U, V,  
21 and W.

22 THE COURT: Okay. T, U, V, and W?

23 MS. CARLYLE: Yes.

24 THE COURT: Okay.

25

1 BY MS. CARLYLE:

2 Q. Ms. Reames, let me draw your attention to what you're  
3 holding there, the photograph that's been marked as Exhibit T  
4 on the back. Can you tell us what that is, please?

5 A. This is a picture of David Barnett when he lived with  
6 us. He's playing badminton in the yard.

7 Q. Okay. And what about U, Exhibit U?

8 A. This is from David's birthday in 1983. He's opening a  
9 present.

10 THE COURT: Another photograph?

11 THE WITNESS: Yes.

12 A. In the photograph is my biological son, our daughter,  
13 and part of myself.

14 Q. Okay. And let me also direct your attention to the big  
15 sheet that's been marked V. And that's a sheet that contains  
16 several photographs, isn't it?

17 A. Yes.

18 Q. Now, there's one of those photographs that's familiar  
19 to you, correct?

20 A. Yes.

21 Q. Okay. Can you tell us --

22 MS. CARLYLE: And what we plan to do, Your Honor, is  
23 to cut this appropriately. The only picture -- at this point  
24 the only one we have has got these other pictures we're not  
25 going to offer, so I'm going to get her to describe where it



1 is, and we'll cut it so you won't be distracted by the other  
2 ones.

3 BY MS. CARLYLE:

4 Q. But tell me where on the sheet the picture is you're  
5 talking about.

6 A. In the bottom left corner.

7 Q. And what is that a picture of?

8 A. It's a group picture that contains David Barnett and  
9 some other children. This is from his seventh birthday  
10 party.

11 Q. Okay. And similarly on Exhibit W, is there a picture  
12 there that is familiar to you?

13 A. Yes, on the bottom right corner, again, it's David's  
14 seventh birthday party. He is in the photo with other  
15 children. There's a cake on the center of the table, and  
16 everybody is set up to start refreshments.

17 Q. Okay. So David's birthday is May 18th, is it not?

18 A. Yes.

19 Q. And he spent that seventh birthday with you, didn't he?

20 A. Yes, he did.

21 Q. And then -- so these are pictures of David having a  
22 party with you?

23 A. Yes.

24 Q. Okay. Now, did there come a time when -- well, when  
25 David came to you originally, was there a gift that you gave

1 him when he got into your -- when he was coming into your  
2 home?

3 A. Yes. He had a stuffed animal, a cat, that he dearly  
4 loved.

5 Q. And that was a cat that you gave him?

6 A. Yes.

7 Q. Okay. And did there come a time when you had to tell  
8 David Barnett that you were going to be leaving?

9 A. Yes, it was not long after his seventh birthday. As I  
10 said earlier in my testimony, I received an opportunity to  
11 study in England, and we had to tell him that we were going  
12 to be leaving.

13 Q. Okay. First, so do you remember what you said to him  
14 to tell him about that?

15 A. Not the exact words, but I did tell him that we were  
16 going to be leaving, my school was somewhere else, and I was  
17 going there. And of course he did ask me if he could go  
18 with.

19 Q. And what did you tell him when he asked if he could go  
20 with you?

21 A. Mr. Biggerstaff, whom everyone assumed was David's  
22 biological father, had parental rights and had not  
23 surrendered those. We told him his dad still wanted him and  
24 that he was eventually going to live with his dad.

25 Q. And did he -- before he left you, did he get to spend

1 any time with his new foster family?

2 A. Yes. We made sure he was able to visit them and come  
3 back to us ahead of time so that he could get used to them in  
4 increments.

5 Q. And how did he respond to being told he was going to  
6 have to leave you, what kind of feelings did he express?

7 A. He was not happy, I mean, you could tell. He was not  
8 good at expressing himself, but he tried. He was not happy.  
9 He was sad. He perhaps was even a little angry.

10 Q. And actually you mentioned he wasn't good at expressing  
11 himself. What did you observe about his speech?

12 A. David is almost the same age as our daughter. And his  
13 vocabulary was way smaller than I was used to with our  
14 children. He did not have the words to tell people when he  
15 was angry or why he was angry or why he was sad. His  
16 favorite expression was, "You're stingy." That covered  
17 everything, everything bad.

18 Q. Now, did you testify at David Barnett's criminal trial?

19 A. I did during the penalty phase.

20 Q. And were you asked about some -- did you identify some  
21 pictures during that testimony?

22 A. Yes.

23 Q. And was one of them of David with that cat we were  
24 talking about earlier?

25 A. Yes.

1 Q. And let me ask you also, do you recall David having a  
2 DFS worker named Mrs. Eshenroder?

3 A. Yes.

4 Q. So who contacted you to testify at David Barnett's  
5 trial?

6 A. His defense attorney team, Ellen Blau, and I don't know  
7 which person in the office, but that defense team.

8 Q. Okay. Do you remember how they found you?

9 A. Through the Internet. They found actually my  
10 father-in-law, who is a senior, and has the same name as my  
11 husband, who is the junior, and through him they got  
12 information to contact myself.

13 Q. Did -- what kind of -- so did they then ask you to come  
14 and testify at his trial?

15 A. Yes, they did.

16 Q. Okay. What kind of preparation did -- did Ms. Blau --  
17 was Ms. Blau the person who asked you the questions?

18 A. Yes.

19 Q. And what kind of contact did you have with her before  
20 you were --

21 A. Well, I received a phone call about my coming to trial,  
22 and then when I was back in I believe it was Clayton, she  
23 introduced herself to me, but that was the extent of our  
24 conversation.

25 Q. Okay. So did she ever sit down with you or did anyone

1 ever sit down with you and say this is what we think you  
2 know, this is what we think we're going to ask you?

3 A. I don't recall anybody doing that with me.

4 Q. Okay. So you've testified today, so you've had a  
5 chance to look at your trial testimony, haven't you?

6 A. Yes.

7 Q. Okay. And you've testified today to some information  
8 that wasn't included in that testimony, haven't you?

9 A. Yes.

10 Q. Okay. Would you have testified to those same things at  
11 the time of David's trial?

12 A. Absolutely.

13 Q. Would you, in fact, probably have remembered more  
14 things about him at that point?

15 A. Perhaps. It's hard to say.

16 Q. Since David's trial have you continued to have contact  
17 with him?

18 A. Yes, I have visited him regularly since the trial.

19 Q. Okay. And by "regularly," roughly how often?

20 A. Sometimes once a year depending on where I live. I  
21 have been eight years abroad in the past 10 or 15 years. So  
22 during those years I was only able to come once a year.

23 MS. CARLYLE: I'll pass the witness. I don't have  
24 any further questions.

25 THE COURT: Mr. Hawke.

1 MR. HAWKE: I have no questions, Your Honor.

2 EXAMINATION

3 BY THE COURT:

4 Q. I have reviewed your prior testimony carefully and  
5 everything is entirely consistent today with what you  
6 testified about previously. You mentioned if asked you would  
7 be willing -- what is there about Mr. Barnett that you knew  
8 then that you did not disclose to anyone?

9 A. I'm not sure if I was asked the question. I did read  
10 the testimony from the trial, but I don't remember every  
11 detail. But his emotional state during the time he lived  
12 with us was not what I think of a typical child that age. He  
13 was often angry.

14 Q. You said he was frustrated?

15 A. He was easily frustrated. And you could tell there was  
16 a lot of underlying anger with this child.

17 Q. You said he would get red in the face and cross his  
18 arms and say, "You're stingy"?

19 A. Right, he did do that. He was slowly learning how to  
20 deal with that.

21 Q. He was what?

22 A. He was slowly learning how to deal with that, but he  
23 wasn't all the way there.

24 Q. You mentioned that he went to counseling. What was  
25 there about it that -- as to why that was initiated. Is that

1 something DFS initiated?

2 A. That was strictly a DFS initiative, and we were not  
3 told any of the details.

4 Q. Okay.

5 THE COURT: You should go believing that your time  
6 with Mr. Barnett appears to be one of the happiest times of  
7 his life. You are excused.

8 Is there any way that those can be clipped so it  
9 doesn't destroy or recopied or something?

10 MS. CARLYLE: Yes. I think we can do that, you  
11 know. We may do it over the weekend, but we can fix that  
12 problem.

13 THE COURT: Okay.

14 MS. CARLYLE: Your Honor, let me check with  
15 Mr. Sindel, he has the remaining witness, and I'm not sure if  
16 she's here yet. If she's not, I may ask we take a slightly  
17 early lunch break. Let me check with him.

18 THE COURT: That's fine. Sure. While we're doing  
19 that, I just want to compliment the individuals in the  
20 gallery today. Even the slightest sound from back there  
21 becomes very distracting and there hasn't been a single peep  
22 from anyone, and I appreciate that. That's something that I  
23 watch carefully. Sometimes there will be talking or  
24 sometimes there will be movement or something. And the  
25 intensity level in this well is so substantial that anything

1 becomes a distraction. So I thank you all for your  
2 courtesies in not subtracting from this process.

3 Ms. Carlyle, I forgot, I have had scheduled for a  
4 long time an 11:30 status conference.

5 MS. CARLYLE: Well, the good news from my point of  
6 view is I don't think he's gone far, but I'm not sure where  
7 Mr. Sindel is. So if we wanted to break for lunch now, I  
8 think that might work out well for both of us.

9 THE COURT: We'll do a full one hour today and come  
10 back at 12:30. Thank you. Court's in recess.

11 (Court in recess from 11:24 a.m. until 12:33 p.m.)

12 MR. SINDEL: Call Barbara Eshenroder, please.

13 BARBARA ESHENRODER,  
14 Having been first duly sworn, was examined and testified as  
15 follows:

16 DIRECT EXAMINATION

17 BY MR. SINDEL:

18 Q. State your name, please.

19 A. I'm Barb Eshenroder.

20 Q. And what do you do? What's your job?

21 A. I work for Children's Division, I'm the quality  
22 assurance specialist for the St. Louis region, that would be  
23 St. Louis City and County Children's Division.

24 Q. And how long have you worked with the Division of  
25 Children's Services? I had to ask you a tough question right



1 from the get-go, right?

2 A. I've been with -- I would say 32 years.

3 Q. Okay. 32 years. Now, has it changed names over the  
4 course of that 32 years?

5 A. Yes, it used to be Division of Family Services.

6 Q. And now is Division of Children's Services?

7 A. It's Children's Division.

8 Q. Children's Division. And was there a time when it was  
9 Division of Social Services?

10 A. It's still the Department of Social Services, but they  
11 created a new division when they created the Children's  
12 Division separating it from DFS, the Division of Family  
13 Services.

14 Q. Okay. Now, can you tell the Court a little bit about  
15 your training and your education? Let's start with  
16 education.

17 A. I graduated with a bachelor's in psychology. Then I  
18 became -- I earned my -- I became licensed, LCSW.

19 Q. When you say "licensed," what do you mean?

20 A. It's a Licensed Clinical Social Worker. It's a license  
21 through the State of Missouri, and it has to do with a level  
22 of professionalism and clinical level.

23 Q. So you have to have certain educational qualifications  
24 as well as training qualifications --

25 A. Right.

1 Q. -- internship before you can be licensed as a social  
2 worker; is that correct?

3 A. That's right.

4 Q. And you've been licensed for some time, haven't you?

5 A. Yes, since '91, I believe.

6 Q. And you did testify at the first trial on behalf of  
7 Mr. Barnett at the penalty phase; is that correct?

8 A. Yes, that's correct.

9 Q. Now, we've got your education. Tell us a little bit  
10 about your training, specifically as it pertains to your  
11 professional relationship with David Barnett and his family  
12 at the time.

13 A. My training, I received some training when I was  
14 promoted to a social service worker. That was about a  
15 two-week training.

16 Q. And there are a number of records that you reviewed on  
17 this, but would it be fair to say that somewhere in late  
18 1981, beginning of 1982 is when you began your work with  
19 David Barnett and his family, if you want to call it that?

20 A. Yes, that's right. And may I interject here, it seems  
21 like this is a good opportunity.

22 Q. Oh, yeah, I'm sorry.

23 A. No, that's okay. I'm ordered to request that the judge  
24 order me to testify using the records in hand, and as  
25 provided in Section 210 of the Revised Statutes of Missouri,

1 in order to be able to disclose information from the record.

2 THE COURT: It is a specific order of this court,  
3 and the order is ordered by me to give responsive testimony  
4 in this case, and that there is no violation of any statute  
5 by her in doing so. If she feels compelled at a later time  
6 because questions go beyond what she believes she can testify  
7 without violating some privilege, then she should speak up,  
8 otherwise this order grants her full privileges and immunity  
9 to testify.

10 THE WITNESS: Thank you, Your Honor.

11 BY MR. SINDEL:

12 Q. Are you ready to go now?

13 A. Yeah, could you repeat that question?

14 Q. That pretty well covers it. Now, you have reviewed  
15 certain records concerning your activities and your  
16 professional responsibilities towards -- his name was David  
17 Pullen then?

18 A. That's right.

19 Q. That's P-u-l-l-e-n?

20 A. Yes.

21 Q. Now, just so we know, let's identify some of the  
22 players in that family. There was David Pullen, who is David  
23 Barnett, and he was the child that you were responsible for  
24 overseeing?

25 A. Yes.

1 Q. And there's some phrases in there, it talks about legal  
2 custody and physical custody. Would you explain to us the  
3 difference between legal custody and physical custody for the  
4 record? I'm sure the Judge and everyone knows it, but --

5 A. Yes. In Missouri it separates the legal custody of a  
6 child and the physical custody of a child, meaning that when  
7 a child is, for example, placed into a foster home, the  
8 court, the family court awards the Children's Division legal  
9 custody, which means that we're responsible for his  
10 well-being and care. And we're also responsible to find  
11 appropriate placement for him. And the placement provider  
12 then is the physical custodian.

13 Q. So would it be fair to say that at least within the  
14 practice of the Division of Family Services back in 1982,  
15 your first goal would be to try to place the child with the  
16 natural parents, if possible?

17 A. Yes.

18 Q. And then if not possible, maybe look to other  
19 relatives?

20 A. Yes. A parent -- yeah, I'm sure that that was the  
21 case. I was not involved in that phase of the program.

22 Q. I know that.

23 A. But I'm saying -- I'm assuming that that's so, yes.  
24 It's -- the goal is to reunite a child with their family.  
25 And since David was placed with a relative, that was

1 considered a preference above that of a stranger or a foster  
2 parent, yes.

3 Q. And during the time that you were working with this  
4 family from late 1981 until early 1983, did you ever have any  
5 contact at all with the natural mother?

6 A. I read in my note in a report that I had a phone  
7 contact with her on one occasion and scheduled a home visit  
8 with her, but that was the one and only contact since she was  
9 not at the home when I attempted to visit.

10 Q. Did you have a home visit with the natural mother?

11 A. I went to her home, and she wasn't there. And so, no,  
12 I did not meet her at home. I did not hold a home visit with  
13 her.

14 Q. So we have David Pullen, and at the time who was David  
15 living with when you basically took the case over?

16 A. He was living with his Aunt Deborah.

17 Q. And was her last name Corder, C-o-r-d-e-r?

18 A. Yes.

19 Q. And who was at that time at least identified as the  
20 possible father?

21 A. That was Robert Biggerstaff.

22 Q. All right. And was there -- and was Robert Biggerstaff  
23 living at Deborah Corder's house the entire time you worked  
24 on the case?

25 A. No. I believe from what I am reading in my notes that

1 he usually was not. He reportedly was living in and out of  
2 the home, but I don't remember reading that I ever saw him at  
3 the aunt's house.

4 Q. And in terms of there was a woman that's identified in  
5 your reports as Mrs. Biggerstaff, who was that?

6 A. That was Robert's -- Robert Biggerstaff's mother,  
7 Deborah and Robert's mother, so she was the paternal  
8 grandmother.

9 Q. So Deborah's name had been changed as a result of  
10 marriage. Her maiden name would have been Biggerstaff. And  
11 Mrs. Biggerstaff, who was also Nina Biggerstaff, she was the  
12 grandmother who was in the home?

13 A. Yes.

14 THE COURT: Wait a minute, she just mentioned  
15 Deborah. Who is Deborah?

16 THE WITNESS: Deborah Corder, the aunt.

17 THE COURT: Okay. Yeah, I got that. And it's Nina  
18 is the grandmother. I got it, is Robert's mother. Okay.

19 MR. SINDEL: Okay. Can I approach the witness, Your  
20 Honor?

21 THE COURT: Yes.

22 BY MR. SINDEL:

23 Q. I'm going to show you what's been marked as Plaintiff's  
24 Exhibit X. Plaintiff's Exhibit X. Ask if you could  
25 generally look through that and see if you can identify the

1 documents that are contained in that folder?

2 A. Yes, this is all my information that I produced while I  
3 was the case manager working with David.

4 Q. Now, there's other information that's part of the file  
5 that you kept, but these are a number of reports that you  
6 made concerning placement, court review, interoffice  
7 communications, and I think what's referred to as a PPPT, am  
8 I right?

9 A. PPRT, Permanency Planning Review Team meeting.

10 Q. You're going to slow down when you say that.

11 A. PPRT, which is a case planning meeting for children who  
12 go into foster care.

13 Q. And are the records that I placed in front of you that  
14 have been marked as Plaintiff's Exhibit X, are those  
15 basically the records that you have reviewed and also the  
16 records that are contained within the Division of Family  
17 Services?

18 A. Yes.

19 Q. And I tried to make sure that they were in  
20 chronological order, so if I could, I'd like to ask you  
21 first, did you have information from David's school about  
22 problems he was experiencing at school?

23 A. Yes.

24 Q. And was that part of the information -- was that  
25 information part of what you used in trying to develop a

1 treatment plan?

2 A. Oh, yes.

3 Q. And when we talk about "a treatment plan," is that kind  
4 of a goal-oriented plan to assist David in the issues he was  
5 having at school and at home?

6 A. Yes, I think it might be termed case plan, treatment  
7 plan, same thing.

8 Q. But the idea is that here's a plan we want to put in  
9 place using the resources that we have that we think will  
10 help David?

11 A. Correct.

12 Q. And was that something that you did throughout the  
13 entire period of time that you worked with this family?

14 A. Yes, I -- yes, it is. I did acquire feedback or input  
15 from the school about his behavior within, you know, across,  
16 over time.

17 Q. And in terms of trying to determine exactly what's  
18 going on with the child, do you look to sources for that  
19 information to help you develop this treatment plan?

20 A. Absolutely, yes. It's very important to acquire  
21 information from a variety of sources so that we have the  
22 best idea of what's happening in a child's situation,  
23 especially where he's living in his placement, relative  
24 placements and whatnot.

25 And it's also very important to involve input from



1 school officials, because that's a really important place --  
2 I mean, that's a really major environment that a child is in  
3 because he spends a lot of time in school. And we consider  
4 school officials to be good sources of information and  
5 reliable ones.

6 Q. And in terms of sources of information, can you tell  
7 the Court some of the other sources of information that you  
8 might utilize in order to develop a treatment plan that was  
9 effective for David Pullen?

10 A. Yes. We acquire information, for example, from  
11 therapists, psychologists, psychiatrists, to -- so that we  
12 know what the child's needs are. So it's a comprehensive  
13 assessment to identify what the needs are. And that helps us  
14 to create a plan to link him with services that are needed.

15 Q. And in terms of, you know, kind of like drawing all  
16 these pieces and sources of information together, can you  
17 also utilize the family where he lives?

18 A. That's right. That's -- the family, whoever the  
19 placement provider is as well as the parents and all the  
20 family who are in contact with the child, they are considered  
21 to be really probably the most important source of  
22 information because they lend us an opportunity to know what  
23 may be happening with that child that might have caused the  
24 behaviors to come to this point. Like in David's, for  
25 instance, using his as an example, we would try to figure out

1     why David is behaving the way he is. And knowing what  
2     happened to him while he was living at home or with the aunt  
3     or, you know, before the agency got involved becomes very  
4     important. And they are the only ones that really know that  
5     information.

6     Q.     And when you talk about an important source of  
7     information, that would assume that they were willing to  
8     share and provide information from the home?

9     A.     Yes. We -- it's real important for us to make the best  
10    effort possible to acquire this information from the family.

11    Q.     Now, at that time and based on your training, would you  
12    also try to establish a bond or a relationship with the  
13    child?

14    A.     Yes, I would say now that that's very important. Back  
15    then --

16    Q.     Go ahead, I'm sorry.

17    A.     Am I transporting myself back 32 years?

18    Q.     Let me ask you a few questions about now, and then  
19    we'll talk about then.

20    A.     Okay. Thank you. Thanks.

21    Q.     Do basically the Division of Family Services establish  
22    a certain sort of either a protocol or policy as to how these  
23    treatment plans and who --

24    A.     Yes, we do.

25    Q.     -- are those source of information?

1 A. Yes.

2 Q. Has that changed?

3 A. No. I don't know if it was developed 32 years -- I  
4 don't know if it was in place 32 years ago, but I can tell  
5 you it is certainly in place now. And if it wasn't in place  
6 then, I can only suppose it's because it just -- I mean, I  
7 don't know why, but --

8 Q. Did you -- do you recall whether you worked regularly  
9 with David in an individual capacity to establish a bond with  
10 him?

11 A. No, I did not. I observed him. He was present during  
12 my home visits. I observed his behaviors, his interactions  
13 with others. I spoke with him a few times, but I did not  
14 make it my priority to take him apart in a different room and  
15 talk to him and interview him.

16 Q. And in terms of the policy that exists now, you  
17 understand that's part of what is used by the workers to try  
18 to establish as much information as possible about a child's  
19 needs?

20 A. Yes. It is considered to be -- children -- acquiring  
21 information from children is considered to be a very  
22 important source of information. And if there is -- the  
23 environment -- if you -- for example, this gets a little  
24 complicated, and I apologize ahead of time. There isn't any  
25 set thing that says every time you go into a family's home,

1     you have to talk with all the children individually, separate  
2     in private. But there are circumstances in which it's  
3     advisable to do that if the environment is such that you're  
4     concerned that the child may not feel free to talk otherwise.

5             So if you want -- if you think that there is  
6     resistance with getting an honest interview and good,  
7     reliable information from any child during a home visit, then  
8     it's really important that you do take him apart from whoever  
9     is providing the placement, from other children, and go to a  
10    private place that's quiet and talk with the child  
11    individually.

12    Q.     And in terms of your interactions with David, you said  
13    I think they usually occurred during the course of a home  
14    visit?

15    A.     Yes, or at school.

16    Q.     And in terms of the home visits, would that be when  
17    Deborah or her mother, Mrs. Biggerstaff, would be present?

18    A.     Yes.

19    Q.     Do you remember -- your impressions of David, was he  
20    talkative, was he verbose, or was he quiet and sullen?

21    A.     I remember reading in my notes that he was quiet, and  
22    he could be described as sullen. I don't remember my exact  
23    words, I'd have to look it up, but sullen is one of the  
24    adjectives I used. And -- but, yes, he was quiet, he was  
25    sullen. And I did observe other things, but I can't say that

1     they reveal -- that --

2     Q.     Let's just for a second not talk about what you can't  
3     say.

4     A.     What I'm trying to say that with this whole big mass of  
5     information, there wasn't a whole lot of observing that I  
6     noted. And I'd have to pick it out to describe it to the  
7     Court. But it is in there. But it isn't -- it doesn't  
8     consist of a big, large mass of information.

9     Q.     Okay. And it isn't certainly as a result of a  
10    one-on-one in private interview with David?

11    A.     No, I never privately interviewed him.

12    Q.     And were there certain factors that you discovered  
13    about his -- from the information you got from the school  
14    that they believed he was learning disabled and behaviorally  
15    disabled?

16    A.     Yes, that was the conclusion arrived at the school  
17    evaluation, they call it an IEP.

18    Q.     And in terms of that, one of the contributing factors,  
19    was the home situation considered?

20    A.     Yes, it was -- yes, it was. It was -- the home  
21    situation was described as unstructured.

22    Q.     Unstable as well?

23    A.     I don't think the IEP used that word, but I could say  
24    that there was an element of instability. Instability is a  
25    broad term. I would say unstructured is probably better.

1 Q. Now, referring to the Exhibit X that you have in front  
2 of you, there is the first report is dated March 29th, 1982.

3 A. Yes.

4 Q. That's a report that you prepared?

5 A. Yes. Yes.

6 Q. And that is in your handwriting?

7 A. Oh, yes.

8 Q. And under the -- on the first page under personality  
9 and behavior, is there an indication concerning aunt -- which  
10 I'm going to say that's Deborah Corder. Is that right?

11 A. That's right.

12 Q. -- is unable to control his behavior. Is that right?

13 A. That's correct.

14 Q. Now, so that would have been a factor that you were  
15 considering in connection with how you were going to handle  
16 this child and this family and this home environment?

17 A. That's right. Yes, that was the idea was to help the  
18 aunt acquire the skills to manage David's behavior better.

19 Q. And I think you also on page 2 of that same document,  
20 it indicates that under the heading Placement Adjustment  
21 Behavior, that -- and this document when it says "W," does  
22 that refer to you as "worker"?

23 A. Yes.

24 Q. "W" unable to observe David in natural setting. In the  
25 last sentence of that particular section.

1 A. Oh, yes, that's right.

2 Q. All right. Now, you had -- you were dealing with  
3 Deborah Corder, you were dealing with Nina Biggerstaff, and  
4 on occasion you were dealing with Robert Biggerstaff; is that  
5 right?

6 A. Uh-huh, yes.

7 Q. And did you come to learn that David was spending  
8 virtually almost all his time in the apartment that belonged  
9 to his grandmother?

10 A. Yes, I did. Yes.

11 Q. And were you aware, was it reported to you that she was  
12 pretty sick with emphysema?

13 A. Yes, I was informed that she was disabled, couldn't do  
14 anything. That was according to the aunt. And that she had  
15 emphysema or breathing problems that were major.

16 Q. And did you also learn that David was an important  
17 caretaker for the grandmother?

18 A. Yes. Yes.

19 Q. Do you think, was it your information that David wanted  
20 to do that and enjoyed that obligation?

21 A. It was my impression that that was -- that David  
22 willingly did that, provided -- he acted as caretaker, wanted  
23 to do that, yes.

24 Q. And is there indication under the heading on that  
25 March 29th, 1982 report under, "Does foster family desire to

1 adopt child if freed?" and you say comments, and in the  
2 second line you indicate that it's your belief that the child  
3 spends almost all his time with his grandmother in her  
4 apartment?

5 A. Yes.

6 Q. Were there other complications? "The grandmother is  
7 really sick, Robert Biggerstaff isn't there very often." Did  
8 Deborah have other health issues she was dealing with?

9 A. She was receiving a disability for a bad back, and she  
10 was pregnant, due in July, that July, and had complications,  
11 which she reported required her to have bedrest.

12 Q. And so that she was not only maybe emotionally unable  
13 to take care of the child but also physically?

14 A. Yes.

15 Q. And in that same section there was an indication of one  
16 of the outside sources she used is a woman named Patty  
17 Kampsen, K-a-m-p-s-e-n?

18 A. Yes.

19 Q. And where did she work at the time?

20 A. Child Mental Health Clinic.

21 Q. And what did they do?

22 A. They are a State -- they were the State clinic through  
23 Department of Mental Health at the time. They provide  
24 counseling to families.

25 Q. And was there a particular reason why you had referred



1 this family to Patty Kampsen?

2 A. Yes, I referred David to Patty in order for her to  
3 provide us with a comprehensive assessment of David's  
4 strengths and needs.

5 Q. And were you having any kind of difficulties with the  
6 family in attaining information?

7 A. Well, yes. Me personally?

8 Q. Yes.

9 A. Yes. I had ongoing problems with the aunt sharing  
10 important information with me. There was a degree of --  
11 ongoing pattern of passive resistance, not showing up for  
12 home visits. When asked questions, providing very little  
13 detail or information in response. And I'd asked her to fill  
14 out a behavior log that would help us target what kinds of  
15 interventions would be best so that she could manage David's  
16 behavior better and to get an idea of just how David was  
17 behaving, and she wasn't completing that as needed.

18 Q. Just a second here. When you talk about a behavior  
19 log, was that something that was part of a routine concept  
20 that was used by the Division of Family Services at that time  
21 to try to get as much information as possible from the  
22 caretakers?

23 A. Yes.

24 Q. And in terms of that log, I think you said that there  
25 were very brief descriptions which would describe either his

1 behavior or anything else that was going on?

2 A. From the aunt you mean?

3 Q. Yes.

4 A. Yes, the information -- I don't have a copy of the log  
5 that Deborah filled out, just the one I filled out, but my  
6 notes and my report, it suggests that Deborah didn't fill out  
7 the form completely, which was a daily form. And most of her  
8 comments described David helping her take care of her baby.

9 Q. Or the grandmother?

10 A. I don't remember that. I just remember the baby.

11 Q. But, in other words, she wasn't really describing  
12 David, she was just saying he spends some time helping me  
13 out?

14 A. Right. That's right.

15 Q. And is there -- and when you asked for the report and  
16 the information from Patty Kampsen that we referred to, did  
17 she talk to you at all about her ability to pry out of these  
18 people any information that might be helpful to David's  
19 treatment plan?

20 A. Yes, in her report she mentioned that she had  
21 difficulties acquiring the information she needed to complete  
22 the assessment.

23 Q. And that was -- that would be parallel to your own  
24 experience with the family?

25 A. That's right.

1 Q. Was there ever an indication that you had either from  
2 your contacts or from the records that you reviewed that the  
3 aunt wasn't -- was opposed to giving out information and any  
4 information being released to Division of Family Services?

5 A. Yes. Yes. Patty Kampsen had reported in her report  
6 that the aunt did not -- stated to her that she did not want  
7 me to have any information on what she was informing Patty  
8 about, that it was none of our business.

9 Q. And that was specifically directed to you as the  
10 assigned caseworker?

11 A. Yes, and that she disliked me.

12 Q. And that -- did you understand whether or not Deborah  
13 Corder ever opened up to anyone concerning what was actually  
14 going on in that household involving David?

15 A. I don't know of anyone she opened up to that reported  
16 back to me.

17 Q. And did she seem reluctant to give you information  
18 concerning the child's behavior or basically anything else?

19 A. That's right. I was -- I could not view her as -- she  
20 wasn't viewed by me as a source of information about what was  
21 happening in the household. I never acquired a good sense,  
22 for example, of what was happening in the household with  
23 David.

24 Q. And in terms of when you interview parents in that  
25 capacity that you were working at that time, was it unusual

1 for you to be able to have to pry this information out or did  
2 usually parents try to volunteer information that they think  
3 is going to be helpful to their child?

4 A. That's a hard question to answer because I had limited  
5 experience with uncooperative parents. So I guess I would  
6 have to say it's very unusual for me. I was -- in my work  
7 with the families that I had in my caseload, I didn't usually  
8 have any problems working with them. They were open and we  
9 had good communication and dialogues.

10 Q. So this was a behavior that was unusual because in your  
11 experience the families that wanted to help their children  
12 were more than willing to be open with you and share  
13 information?

14 A. You know, I can't really say that that's -- that cause  
15 and effect. I just don't know. It might be that I was good  
16 at my job and I engaged families easily. I think that was a  
17 quality that I had. But I think there's always the potential  
18 for a parent to need some encouragement and support from the  
19 social worker that meets them for the first time in order to  
20 open up about what's happening.

21 Q. But did you try to indicate to Deborah, to  
22 Mrs. Biggerstaff, to Robert Biggerstaff, that you were  
23 interested in helping them?

24 A. I'm assuming so. I can't --

25 Q. If you hadn't, you wouldn't have been doing your job?

1 A. Right. I would be very surprised if I didn't work very  
2 hard at that. But I can't remember exactly how that went.

3 Q. And there's references throughout your notes to  
4 attempts at home visits that couldn't be completed because  
5 they weren't there?

6 A. Right. Yes. I was -- I did have -- there were a  
7 pattern of attempts to make home visits with Deborah that  
8 were not successful.

9 Q. And there was significant indications throughout those  
10 notes that appointments that were made either to secure  
11 information about the child's health or counseling, they  
12 weren't kept, right?

13 A. Yeah, I had problems getting that information. And --  
14 it's clear that I was having problems getting that  
15 information, yes.

16 Q. And in terms of did you also on page 3 of the report  
17 that we referred to indicate that you were also attempting to  
18 meet with Robert Biggerstaff?

19 A. Yes. Yes.

20 Q. And you were assuming he was the father, correct?

21 A. That's right.

22 Q. Did you -- were you aware of whether his name appeared  
23 on the birth certificate or not?

24 A. No.

25 Q. And your attempts to meet with the father, they didn't

1 meet with success at that time, right?

2 A. Right.

3 Q. Now, at the bottom of the page under the heading  
4 Comments, there is a reference to information that  
5 Mr. Biggerstaff spends his time in bars?

6 A. Right.

7 Q. And has been known to take David with him into bars?

8 A. Yes, in the past.

9 Q. And that the brother is believed to be an alcoholic,  
10 Robert Biggerstaff?

11 A. Correct.

12 Q. And that Mr. Biggerstaff, in fact, admitted he was an  
13 alcoholic to you?

14 A. Yes, he did later.

15 Q. And then on page 4 of that particular report under  
16 Comments, right there about a little bit past the halfway  
17 mark, there is a reference to a long-term plan?

18 A. Yes. "A long-term plan to be determined after  
19 considerations defined -- described above. After we continue  
20 to supervise child in the relative home and to make note of  
21 the results of the evaluation at Child Mental Health and of  
22 child's progress regarding his behaviors at school and at  
23 home."

24 Q. So you wanted to get some additional information  
25 because you were concerned about what long-term plan that you

1 could put together that would be beneficial to this child,  
2 correct?

3 A. That's right.

4 Q. All right. Now, I'm going to refer you, there's  
5 another report, this is the PPRT presentation, it's dated  
6 April 15th, 1982. Now, just so we know, these reports that  
7 you made to the court, are they something you do on a  
8 periodic basis so that the court knows what's happening with  
9 this child?

10 A. Yes.

11 Q. And these PPRT presentations, are they also done on a  
12 routine and regular basis?

13 A. Yes.

14 Q. And in those particular situations you report to the  
15 other members of the team about what you have learned so  
16 there could be some consolidated effort to get a plan in  
17 place.

18 A. Yes, the PPRT information is provided to the team at  
19 the time of the meeting. And at the end they write  
20 recommendations on the bottom of the report, of the PPRT  
21 report.

22 Q. And if you would look on the April 15th, 1982, there's  
23 a heading called application or -- I'm sorry, Appropriateness  
24 of Present Placement, right?

25 A. Yes.

1 Q. And that was basically sort of an area for you to enter  
2 the information that you had about whether or not living with  
3 Deborah Corder, Nina Biggerstaff, and here and there with  
4 Robert Biggerstaff was an appropriate placement, right?

5 A. Right.

6 Q. Do you indicate there towards the latter part of that  
7 that it was in your mind questionable whether that was an  
8 appropriate placement?

9 A. Yes, I did. I wrote down that it was questionable that  
10 the aunt would be able to meet David's special needs.

11 Q. And those special needs weren't being met either  
12 through ignorance or physical incapacibilities?

13 A. Right.

14 Q. "Ignorance," that was Deborah Corder, right?

15 A. Right. For whatever reason, and I did state either  
16 that she didn't know how to do it or because she was unable  
17 or physically unable or incapable to do it.

18 Q. And do you also indicate in that particular section  
19 under Progress Since Last PPRT Review that it appeared as if  
20 David was spending about 100 percent of his time with his  
21 seriously disabled grandmother?

22 A. Yeah, I said, "He spends over half of his time in his  
23 grandmother's apartment to date. It may be 100 percent of  
24 the time. He sleeps and eats with her. Sleeps in her bed in  
25 her apartment."



1 Q. Now, at some time in April of 1992 did you become aware  
2 that Robert Biggerstaff had been incarcerated at the St.  
3 Louis Workhouse. If you'll look past that April 15th report  
4 there's a letter.

5 A. The next report?

6 Q. 1982.

7 A. I wrote, "The letter alludes to the reason why the  
8 child came into care" -- or let's see -- "He was incarcerated  
9 in the St. Louis Workhouse at the time, around the time David  
10 came into foster care, and placed into his aunt's home."

11 Q. So that was another problem that the family was  
12 experiencing, that Robert Biggerstaff, whatever support he  
13 was, certainly wasn't providing it while he was incarcerated?

14 A. Right.

15 Q. And then if you'll look underneath that, there is an  
16 assessment that is dated on May 28th of 1982.

17 A. I have it.

18 Q. And that's from -- is that from Patty Kampsen, we  
19 talked about earlier?

20 A. Yes.

21 Q. And, again, in that particular assessment she says,  
22 "I'm not getting information from mom, and grandma is very  
23 sick and can't really help."

24 A. Right.

25 Q. Now, there's also a reference to a woman on the last

1 sentence of the first page, Diane Foster?

2 A. School counselor.

3 Q. And who is that, the school counselor?

4 A. School counselor.

5 Q. And were you in contact with the school counselor in  
6 order to obtain as much information as you could from  
7 whatever source you felt was reliable so you could develop an  
8 appropriate treatment plan?

9 A. I was -- I was in contact with school officials through  
10 reports that I sent to them, and they were submitted back to  
11 me. And I might have referenced in my reports to the court  
12 that I talked with her, I can't remember.

13 Q. Is there a reference in Ms. Kampsen's report about  
14 having talked to Diane Foster?

15 A. Yes.

16 Q. And does it indicate she has not experienced any  
17 cooperation on the part of the family, particularly his aunt?

18 A. Yes, that's what it says.

19 Q. And would that be consistent with what you had  
20 experienced in your dealings with her?

21 A. Yes.

22 Q. Now, there's a discussion in that report that you use  
23 in order to try to formulate a treatment plan about the  
24 family history, right?

25 A. What part?

1 Q. Page 2, Personal and Family History.

2 A. Oh, yes.

3 Q. Okay. And it says that very little is known?

4 A. That's right.

5 Q. And there were some circumstances involving Deborah's  
6 husband that caused you concern, correct?

7 A. Yes.

8 Q. And what was that?

9 A. The circumstances I was informed was that he had a  
10 heroin addiction.

11 Q. So when he lived in the house, there was somebody  
12 shoving needles in their arms and taking heroin? He was a  
13 heroin addict is what you understood?

14 A. Yes.

15 Q. And did you also understand how he treated Deborah  
16 while he was there?

17 A. Yes, there was domestic violence involved. They had a  
18 domestic violence involved relationship.

19 Q. And then there's an indication that they did eventually  
20 reunite for a short period, correct?

21 A. Yes.

22 Q. In that section?

23 A. At one point.

24 Q. And that lasted, what, a couple of days until after  
25 they got custody of David?

1 A. You know, that was before I got involved, so I don't  
2 know anything about that reunification, about that period,  
3 but I think they later on in the course of my working with  
4 the family, I think they got back together.

5 Q. And was there an indication in that report that they  
6 separated right after the court hearing concerning --

7 A. Yes, that's true.

8 Q. Now, did Patty also try to observe and talk with David  
9 in order to make some assessment?

10 A. Yes.

11 Q. And is that under the heading there, Observation and  
12 Assessments of Identified Patient?

13 A. Yes.

14 Q. Did she indicate anything about when he answered  
15 questions what would happen?

16 A. Yes, he wouldn't elaborate on certain questions. On  
17 the question about his statement that he made to her that  
18 Debbie gets him in trouble, and he wouldn't elaborate on his  
19 relationship with his aunt or grandmother. He did tell her  
20 he spent most of his time with his grandmother while Debbie  
21 and a bunch of people lived downstairs. And he appears close  
22 to his father according to the counselor, and he did say he  
23 enjoys the times he gets to see his father. And he said  
24 wishes he still lived with his father.

25 Q. Now, also in that observation and assessment on page 3

1 of the report, from her contacts with David, she basically  
2 indicates he would have a positive response to what?

3 A. He would respond in an environment that would provide  
4 him with a consistent structure and one that would respond to  
5 his emotional needs.

6 Q. And did you throughout the time that you tried to work  
7 with this family, were you concerned about that very aspect  
8 of David's life?

9 A. All I could tell you, because I don't have a memory of  
10 my impressions outside of this information that I'm reading,  
11 I could say that I did not read any description of  
12 observations of a bonding or closeness or affection that I  
13 might have observed between Deborah and David. I didn't see  
14 any of that. But I saw there was -- there was affection and  
15 bonding between David and Robert Biggerstaff.

16 Q. And that was sort of a -- I mean, you saw those things.  
17 Was there behavior that you observed on the few times you saw  
18 Mr. Biggerstaff that caused you concern?

19 A. With Mr. Biggerstaff?

20 Q. Yeah. Did he ever take your photograph?

21 A. Oh, that was -- I kind of thought that was against me.  
22 It was more targeted on me and not David. But I remember  
23 when I was supervising visits --

24 MR. HAWKE: Objection, Your Honor, it's not  
25 relevant.

1 THE COURT: I'm not sure it's relevant. I'm not  
2 sure it's responsive. I don't understand what she's saying.

3 BY MR. SINDEL:

4 Q. Was there certain behavior that Mr. Biggerstaff  
5 directed towards you while he was supposed to be visiting  
6 with his son that caused you discomfort and concern?

7 A. Yes, during a supervised visit --

8 MR. HAWKE: Objection, the question was a yes or no  
9 question.

10 THE COURT: Yes. Sustained.

11 Q. Explain your answer. When you said yes, what happened?

12 A. Mr. Biggerstaff asked me to stand next to David so he  
13 could -- and then he took our picture, and I was  
14 uncomfortable with that.

15 THE COURT: He asked you to stand by David?

16 THE WITNESS: Yes, so he could take my picture. And  
17 I didn't say no, I just did it. And I was uncomfortable, but  
18 he took my picture with his son David.

19 BY MR. SINDEL:

20 Q. And under the Observations and Assessments of Family  
21 that was in the report that was prepared by the social  
22 worker, Patty Kampsen, does she basically renew and repeat  
23 the concerns about the family and their failure to open up  
24 and provide information?

25 A. Yes, she does talk about that.

1 Q. Now, as a result of what she does and the information  
2 that you're trying to input in for a treatment plan, does she  
3 make any recommendations?

4 THE COURT: Patty?

5 MR. SINDEL: Patty Kampsen, yes, sir.

6 A. Yes, she does make recommendations.

7 Q. And in terms of the recommendation, does she indicate  
8 whether she believes that treatment will be possible if there  
9 isn't full cooperation and involvement?

10 A. She said, "I do not believe that this aunt and other  
11 family members will cooperate and support the therapeutic  
12 process."

13 Q. Does she also discuss her doubts about the home  
14 setting?

15 A. She has serious doubts as to how much this home setting  
16 will be able to provide for David's various needs.

17 Q. And then does she come down to a recommendation after a  
18 conference with you concerning alternative treatment plans?

19 A. Yes. She recommends a conference with me advising me  
20 of her impressions and discussing the availability and  
21 feasibility of an alternative placement for David.

22 Q. What does "alternative placement" mean?

23 A. That means a different placement other than the one  
24 he's in.

25 Q. Now, if you'll go to a letter dated July 26th, 1982

1     that you sent to the supervisor at the St. Louis County  
2     Juvenile Court.

3     A.     Yes.

4     Q.     And that's an indication concerning Deborah Corder and  
5     her being hospitalized to give birth to a baby?

6     A.     Yes.

7     Q.     Is there a date of when that happens?

8     A.     Yes, she went into the hospital to have her baby on  
9     June 3rd, 1982.

10    Q.     And it was your understanding that around that time he  
11    would stay with Robert Biggerstaff?

12    A.     Yes, because -- yes.

13    Q.     And there were other people in the Biggerstaff -- it  
14    wouldn't be his home, but where he stayed; is that right?

15    A.     Yes.

16    Q.     And there was a woman he was staying with named Vanessa  
17    and her two children?

18    A.     Yes.

19    Q.     And he indicated he planned to marry her, right?

20    A.     Yes.

21    Q.     Sounded like a good idea. How long did that  
22    relationship last according to the letter that you have?

23    A.     It lasted until June 25th when he ended their  
24    relationship. Well, actually when they ended their  
25    relationship.



1 Q. And then later on did you learn that David was, in  
2 fact, staying with Nina Biggerstaff because his father was  
3 out of town?

4 A. No. On that letter it says --

5 Q. Next page.

6 A. Oh, sorry. I don't have -- I have that --

7 Q. "I learned from Mrs. Biggerstaff," you see that in the  
8 sentence that begins, second page?

9 A. Yes. "I learned from Mrs. Biggerstaff" -- oh, yes. It  
10 says that "Ms. Nina Biggerstaff told me that David's father  
11 is still out of town, the baby -- Deborah's baby is still  
12 hospitalized, and that David continues to live with her and  
13 Deborah."

14 Q. Now, after that particular letter there's a document  
15 that's labeled Foster Home Placement Request. Do you see  
16 that?

17 A. Yes, I do.

18 Q. That's dated August 18th, '82?

19 A. Yes.

20 Q. Now, what is that about? What is a Foster Home  
21 Placement Request?

22 A. It's a form that I filled out to refer a -- to make a  
23 request for a home -- finding a unit within the agency to  
24 locate a foster home placement for David.

25 Q. Were you making -- go ahead, I'm sorry.

1 A. I made the referral to the home finding unit.

2 Q. You're making this referral and this request because of  
3 what you had observed and learned about Deborah Corder, about  
4 Robert Biggerstaff's alcoholism, about Deborah Corder's  
5 husband, and all the other variable things you talked about?

6 MR. HAWKE: Objection, Your Honor, leading.

7 THE COURT: Yes.

8 MR. SINDEL: I'm sorry, I'll rephrase.

9 BY MR. SINDEL:

10 Q. You've talked about a whole lunch of stuff here. Was  
11 that the basis for your recommendation that he be considered  
12 in other placement?

13 A. Yes.

14 Q. And there is at the bottom of the page basically your  
15 assessment that the placement with the aunt was inadequate?

16 A. Yes, that the aunt's placement -- "Placement with aunt  
17 was judged to be inadequate. And a home study on father  
18 resulted in determining that his placement with father was  
19 not adequate. Therefore, foster home placement was being  
20 considered -- is being considered."

21 Q. And then on the second page of that particular thing is  
22 there an indication under the heading Relative Resources that  
23 didn't appear to you that you could foresee any changes in  
24 the circumstances that would make that a viable alternative?

25 A. Yes, that --

1 Q. The last sentence.

2 A. The arrest -- that the father had the arrest record,  
3 you mean, or the one that says family?

4 Q. "W" cannot foresee --

5 A. Oh, okay. "Worker unable to locate the mother.  
6 Family has -- there's significant evidence of lack of  
7 structure in the environment long term. We can't foresee  
8 changes in the situation in the near future."

9 Q. Now, the next document in that packet is dated  
10 October 4th of 1982. Again, this is a letter to the Juvenile  
11 Court. And is that part of what you do?

12 A. Yes, we report -- we keep the court apprized of the  
13 circumstances.

14 Q. And there's basically on the second page, you continued  
15 basically in your recommendation to take that child out of  
16 the home?

17 A. Right.

18 Q. There's also an interoffice communication that's in  
19 part of that packet. And does that also talk about the  
20 efforts to find a home for David?

21 A. Yes, I've requested them to -- they said resume efforts  
22 to find a home for David.

23 Q. And part of your concerns was that Deborah had moved  
24 and had not registered him in school as of October 5th. In  
25 fact, October 5th, the date of that report or that memo?

1 A. Yes, it's October 5th, 1982, and it does state that  
2 Deborah moved to the city with her newborn and David, and  
3 David had surgery and -- to unclog his nose passages due to  
4 breathing problems, and he hadn't been registered in the  
5 school district.

6 Q. Do you remember how long it took for her to get him  
7 registered in school?

8 A. No, I'd have to look at the notes.

9 Q. We'll get to that. But there's a second -- there's a  
10 page to that report to where you wrote on the back, and it  
11 basically continues in the same vein as the others, right?

12 A. The back of -- I don't see anything. I'm not sure what  
13 you're talking about. The back of what report?

14 Q. In the report that we referred to, just so we're clear,  
15 there is an indication that you continue on the back side.  
16 And I'm just saying there's a page there that continues. It  
17 says Roman Numeral V, continue, c-o-n-t. If you're looking  
18 that far back you may not have it there.

19 A. What is the date of the report you're referring to?

20 Q. It's the report dated --

21 THE COURT: October 4?

22 Q. -- October 12th, '82.

23 THE COURT: October 12th?

24 MR. SINDEL: October 12th, yes.

25 A. Oh, I see. I got it.

1 Q. And that basically continues in the same vein as all  
2 the others.

3 A. Would you repeat your question?

4 Q. Does that basically continue in the same vein as the  
5 others in terms of the cooperation you were getting and the  
6 fact that the home was inadequate?

7 A. Yes. It actually says that, "I was unable to determine  
8 the aunt's ability to provide adequate care for David due to  
9 difficulties in meeting with her in home visits and failure,  
10 her failure to cooperate or communicate openly with me about  
11 what was happening."

12 Q. Now, there is an addendum to that recommendation that's  
13 called Addendum for Relative Placement; is that correct? Can  
14 you see that there?

15 A. In the same report?

16 Q. Yes.

17 MR. SINDEL: May I approach, Your Honor?

18 A. I see the addendum.

19 Q. And that is basically the addendum that you put into  
20 these reports to say, hey, what can we do about maybe placing  
21 this kid with his relatives?

22 A. Right, it provides additional information.

23 Q. And at the bottom there, there's a place where you can  
24 put in information about the relative's response to services,  
25 right?

1 A. Yes.

2 Q. And is there an indication in there about the failure  
3 to register the child in school?

4 A. Yes. I wrote that, "Ms. Corder failed to register the  
5 child in school when first requested to do so. Failed to  
6 make appointments for child for exam to determine  
7 hyperactivity."

8 Q. Was that appointment with a hospital or a doctor? Do  
9 you recall if there was an appointment at Cardinal Glennon?

10 A. No, I don't.

11 Q. But whatever it was, she failed to make the appointment  
12 or make one, right?

13 A. Yes, she failed. And she failed to call for an  
14 appointment at the Family Children Services for therapy. I  
15 know that's for therapy.

16 Q. And then under the next page it refers to basic  
17 information?

18 A. Yes.

19 Q. And there's a paragraph 11. "Who does the mother state  
20 is the father of the child?" And you have written in there  
21 "Unknown"?

22 A. Right.

23 Q. And then the next page talks about a father's addendum?

24 A. Yes.

25 Q. And did that indicate that Mr. Biggerstaff didn't

1 participate in family counseling? On the bottom  
2 right-hand --

3 A. Right, I see it. Yes, it says, "Father failed to  
4 meet -- father didn't participate in family counseling."  
5 Yes, it says that.

6 Q. Was there also a reference to a log book?

7 A. Yes, he did not present the log book concerning his  
8 observations of David's behavior at the home visit on  
9 11/23/82 nor at any other time.

10 Q. Now, after that document there's a document that's  
11 labeled Court Review Short Report; is that right?

12 A. I guess so.

13 Q. Dated 11/24/82?

14 MR. SINDEL: May I approach, Your Honor?

15 THE COURT: Yeah.

16 MR. HAWKE: I'm sorry, what was the date on that?

17 MR. SINDEL: 11/24/82.

18 BY MR. SINDEL:

19 Q. Can you see that document?

20 A. Yes.

21 Q. All right. Tell -- just real briefly, what's that?  
22 What's that for?

23 A. I was wondering the same thing when I first saw it --

24 Q. Is that your handwriting?

25 A. -- why I wrote it. And I don't remember filling it

1 out, but I know I did. And I can describe it for you. It's  
2 a log of the date and the person and the people I contacted  
3 in the course of my working with the family, the type of  
4 contact it was, and any comments about the contact, and  
5 submitted it to court.

6 Q. And then you submit that to the court. And it  
7 describes the nature of the contact and who you had the  
8 contact with, right?

9 A. That's right.

10 Q. And what, if anything, you learned, right?

11 A. Right.

12 Q. And is there under the -- on the right side under  
13 comments is there a -- under the second document, is there a  
14 reference to the paternity statement from Mr. Biggerstaff?

15 A. Yeah, it says father refused to sign a paternity  
16 statement for Janice Glass according to the income  
17 maintenance supervisor.

18 Q. And throughout this document, you detail the  
19 information that you learn from various sources, your  
20 attempts to contact individuals, that whole thing on a  
21 date-by-date basis, is that a true statement?

22 A. Yes, it's quite extensive. Lots of contacts.

23 Q. And in terms of on the third page of that document with  
24 the first one, I think it's the fourth page, it starts with  
25 Mr. Biggerstaff?



1 A. Yes.

2 Q. You see that? It looks like the date is something  
3 25/82?

4 A. Yes, I see it.

5 Q. There's an indication about Mr. Biggerstaff refusing to  
6 provide information about his employment. No, I'm sorry, I  
7 think I referred you to the wrong place. I'm talking towards  
8 the middle.

9 A. I found it.

10 Q. It's a date of 26/82, I don't know the month for sure.

11 A. Yes.

12 Q. Refused to verify income?

13 A. He said he quit his job because his employer refused to  
14 verify the income for the home study that I was conducting.

15 Q. So his -- the reason he didn't complete the home study  
16 was because his employer refused to verify he had any income?

17 A. No, I don't believe so. I believe that in the course  
18 of him attempting to comply with the home study request,  
19 which included his employment history or whether or not he  
20 was gainfully employed, we frequently ask parents to provide  
21 evidence that he was employed, and his employer refused to do  
22 that.

23 Q. That's what he reported to you?

24 A. Yes.

25 Q. And at least in this particular report do you go

1 through and sort of like document the contacts that you've  
2 had with people and what you learned from them?

3 A. Yes, it's exactly that.

4 Q. All right. Now, if you'll look to a page of the  
5 report, they are not paginated unfortunately, but it says  
6 person contacted, and shows November 4th of 1982, and it's  
7 Deborah Corder. You see that?

8 A. Yes.

9 Q. Is there information there about you need to get the  
10 child registered in school?

11 A. Yes. It has that I helped her to register David at  
12 school by calling the school for information. And the aunt  
13 appeared to give David an excessive amount of responsibility  
14 concerning her baby at that home visit. This information was  
15 collected at a home visit, during a home visit. And  
16 indicated she was baby-sitting for her nephews, and it tired  
17 her. And she was to register David today for school.

18 Q. So at least your understanding was that by November the  
19 4th of 1982, some two months after school started, he still  
20 wasn't registered?

21 A. Correct.

22 Q. And then in the final page of that Court Review Short  
23 Report, it begins with St. Vincents, Ms. Dorsey?

24 A. Yes.

25 Q. And who is Ms. Dorsey and what is St. Vincents?

1 A. St. Vincents is a residential treatment facility. St.  
2 Vincent's Children's Home probably.

3 Q. So 20 days after Ms. Corder had failed to register  
4 David for school, you were asking around for possible  
5 placement in long-term residential facilities?

6 A. Well, I would -- it's not necessarily long term, for  
7 the long term, but it was a residential treatment facility.

8 Q. And when you say "residential treatment facility," what  
9 does that involve?

10 A. They are considered a highly -- compared to a foster  
11 home or a family's home, they are considered a higher degree  
12 of structure.

13 Q. Was that something that you felt was needed for David  
14 as a result of the information you secured from all these  
15 sources?

16 A. I can't -- I do not know.

17 Q. Well, you were looking for a place to place him,  
18 weren't you?

19 A. Yes, I was. I don't know -- I can't tell from this  
20 paper or from my information I reviewed if the preference was  
21 for David to go into residential treatment as opposed to a  
22 foster home.

23 Q. But you are definitely considering an alternative  
24 place?

25 A. Excuse me, may I elaborate on that? I remember just

1 now reading that a reply from the home study or the home, the  
2 unit -- the home -- the unit in which they were trying to  
3 find a home for David within the agency, they were not able  
4 to find a foster family that would be willing to take a child  
5 with behavior problems, so I think that's why I chose to  
6 search for a placement in a more structured setting.

7 Q. And so, you know, part of the process, if I understand  
8 it right, is you look to see if there's a foster home, and  
9 then if there isn't, you might look for another possible  
10 placement besides staying in the Corder, Nina Biggerstaff  
11 home?

12 MR. HAWKE: Objection, it was leading and wasn't  
13 what she said to begin with.

14 MR. SINDEL: Well, I think we have the picture.  
15 BY MR. SINDEL:

16 Q. I'm going to refer you to this, the letter dated  
17 November 29th, 1982 that you sent to the Juvenile Court  
18 concerning David, correct?

19 A. Yes, I see it.

20 Q. And that basically is a summary of all the  
21 circumstances and situations that you have that caused you to  
22 reach a determination about placement?

23 A. Progress? It starts, "The progress made by David"?

24 Q. It's a lengthy letter, it talks about service  
25 agreements, David's behavior at home?

1 A. Yes.

2 Q. David's behavior at school?

3 A. Right.

4 Q. And your assessment and recommendation?

5 A. Correct.

6 Q. And it was that he be removed from that house and  
7 placed in another facility, correct, or another home?

8 A. It's a recommendation --

9 Q. Correct.

10 A. -- that he be placed in residential treatment as  
11 opposed to his aunt's home, as it was believed that it would  
12 be more appropriate and will ensure security and stability  
13 and eliminate the possibility of him being moved from one  
14 place to another.

15 Q. Now, was there a time that you can recall that David  
16 was actually placed with another family?

17 A. Yes.

18 Q. And I'm going to refer you to your -- the final report  
19 there, it's dated April 20, '83.

20 A. The PPRT review?

21 Q. The foster child PPRT review.

22 A. Okay, I see.

23 Q. For David Pullen. Do you see that?

24 A. Yes.

25 Q. Do you see the date of April 20, '83?

1 A. Yep.

2 Q. And that basically says there's a reason for custody,  
3 and then his progress at his new family, correct, under Roman  
4 Numeral V?

5 A. Oh, V, five? Okay. Got it.

6 Q. See that?

7 A. Yes.

8 Q. You don't have to read it, I'm just asking if you see  
9 that.

10 A. Yes, I see that.

11 Q. And does that indicate his progress with this new  
12 family?

13 A. Yes, it does.

14 Q. Seems to like school?

15 A. Right.

16 Q. Motivated?

17 A. Yes.

18 Q. Isn't destructive, sad, or overly serious?

19 A. Correct.

20 Q. And he likes the family?

21 A. Right.

22 Q. Do you remember if that family was the Reames family?  
23 Are you able to recall their names?

24 A. I remember it from the report it was the Reames, but  
25 no, I don't recall without reading it in the report.

1 Q. And under Roman Numeral VI, Placement Plan. You see  
2 that section?

3 A. Yes, I do.

4 Q. And there's a reference to counseling with a Dr. Doris  
5 Gilpin, G-i-l-p-i-n?

6 A. Yes.

7 Q. D-o-r-i-s?

8 A. Yes, I see it.

9 Q. And that's a psychiatrist you use frequently?

10 A. Yes.

11 Q. And to your knowledge were they keeping those  
12 appointments on a regular basis?

13 A. Yes.

14 Q. Now, do you recall of your own independent memory  
15 without looking at all the documents that you have in that  
16 Exhibit X, the day that David was turned over to this new  
17 foster family, the Reames?

18 A. Yes.

19 Q. And can you tell us what you recall about that  
20 particular day?

21 A. I remember very clearly that David was upset, very  
22 upset to have been removed from his family, and that he was  
23 very quiet and timid, I guess in a way, uncertain. And he  
24 was clutching a stuffed animal really tightly.

25 Q. What kind of animal?

1 A. It was a cat.

2 Q. Was it old or new?

3 A. I believe it was new.

4 THE COURT: Did you say he was clutching?

5 A. Clutching, clutching tightly to his chest.

6 Q. Do you remember, do you have an independent memory of  
7 whether that animal came from the Reames family or not?

8 A. Not really.

9 Q. Now, the information that you testified to, the records  
10 that you reviewed and everything, were you able to testify  
11 and review those records back in 1997 when you testified at  
12 the penalty phase of David's proceeding?

13 A. Yes.

14 Q. And if you had been asked the questions you were asked  
15 here today, would you have answered them truthfully like you  
16 have today?

17 A. Yes.

18 Q. And would you have been able to provide information  
19 concerning David's home environment, what was going on, and  
20 why there was a decision to place him with the Reames or some  
21 other family?

22 A. Yes.

23 Q. Now, do you recall meeting with any members of the  
24 defense team prior to your being -- prior to testifying at  
25 the penalty phase?



1 A. No.

2 Q. And you did testify at the penalty phase, correct?

3 A. Yes.

4 Q. And there was a significant portion of your testimony  
5 that dealt with the fact that at a court hearing for David's  
6 placement, that the Corder's failed to bring him to court,  
7 the Biggerstaffs?

8 A. Right.

9 Q. And eventually it resulted in a warrant for their  
10 arrest and a contempt citation?

11 A. Yes.

12 Q. And as you testified to at that proceeding, after a  
13 whole lot of stuff, they finally brought the child to the  
14 court so that he could be placed?

15 A. Correct.

16 Q. And do you -- do you remember at any time withholding  
17 any of the information that you testified to here today from  
18 any members of the defense team?

19 A. No.

20 Q. And if they had asked you these -- for the information  
21 during any kind of investigation, would you have provided it?

22 A. Yes, I would have.

23 Q. And to your knowledge were the records that we have  
24 referred to today, subpoenaed and part of the records that  
25 were developed during the course of their investigation? If

1     you don't know, you don't know.

2     A.     Would you repeat that last sentence?

3     Q.     I will.  Do you know whether the Petitioner's Exhibit X  
4     was part of the records that were furnished to the defense  
5     team by the Juvenile Court?

6     A.     No, I don't.

7             MR. SINDEL:  That's all I have.

8             THE COURT:  Cross.

9                     CROSS-EXAMINATION

10    BY MR. HAWKE:

11    Q.     Good afternoon.  I have a few questions I need to ask  
12    you in light of your testimony this afternoon.  I could tell  
13    from your direct -- from your direct testimony that you  
14    recall the day when custody changed to the Reames family.  Is  
15    that correct?

16    A.     Yes.

17    Q.     Other than that memory, do you have other memories of  
18    the David Barnett case?

19    A.     Yes.

20    Q.     Okay.  Independent of the records?

21    A.     Yes.

22    Q.     Okay.  And is it fair to summarize your testimony as  
23    he -- well, who had legal custody of David Barnett at the  
24    time that we're discussing here?

25    A.     DFS did.

1 Q. DFS did. And the physical custody was with  
2 Mr. Biggerstaff or with Ms. Corder or with the grandmother?

3 A. With Deborah Corder.

4 Q. Okay. And he had been placed with her at some point  
5 before you got involved in the Barnett case?

6 A. Yes, he was apparently according to information --

7 Q. That was a yes/no question.

8 A. All right.

9 Q. And as I understood your testimony, a decision was made  
10 to change custody from Deborah Corder to somebody else  
11 because of the lack of structure in the Corder home; is that  
12 correct?

13 A. Yes. May I explain my answer?

14 Q. It was a yes/no question. And that recommendation was  
15 consistent through time; is that correct?

16 A. What recommendation?

17 Q. That once the recommendation was made, that  
18 recommendation continued until custody actually changed?

19 A. I'm not sure I understand.

20 Q. Let's go at it this way. There was -- from your  
21 perspective there was a lack of structure in the Corder home?

22 A. Yes.

23 Q. Okay. And there was not contact or discussions between  
24 you and other members of DFS and school employees to change  
25 that idea that there was a lack of structure in the Corder

1 home?

2 A. I can't agree with that.

3 Q. Didn't I understand your testimony that the aunt did  
4 not cooperate with you?

5 A. Yes.

6 Q. And did not cooperate with the school counselor?

7 A. Yes.

8 Q. So because of that lack of cooperation, the  
9 recommendation that he -- his custody change from the Corder  
10 home to someplace else continued; isn't that correct?

11 A. That would be fair to say. May I explain further on  
12 the recommendation because --

13 Q. Is it fair for me to characterize this as a  
14 recommendation was made and the Corder family was given  
15 multiple opportunities to change someone's mind about that  
16 recommendation, and they failed to do that?

17 A. I guess so.

18 Q. Okay. Mr. Biggerstaff did not sign a statement  
19 admitting paternity of David Barnett; is that correct?

20 A. That's my understanding.

21 Q. Okay. And that he would not be -- if he had signed  
22 such a statement, would he have been obligated to provide  
23 child support to --

24 MR. SINDEL: I'll object to that as a legal  
25 conclusion. Subject to foundation, I have no problem if she

1       answers.

2               THE COURT:  What you're saying is if she knows the  
3       answer, you don't have any objection.

4               MR. SINDEL:  If there's some foundation for her  
5       knowing how she knows the answer.

6               THE COURT:  Okay.  Do you understand the question,  
7       first of all?

8               THE WITNESS:  Yeah.

9               THE COURT:  Now, is there some basis in fact that  
10      you would know one way or the other?

11              THE WITNESS:  No.

12              THE COURT:  Sustained.

13      BY MR. HAWKE:

14      Q.      In November of 1982 that aunt still had not placed  
15      David Barnett in school, was that correct?

16      A.      November, what date?

17      Q.      November 4, 1982, I believe you testified --

18      A.      Correct.

19      Q.      -- that the child -- that you went and helped her  
20      register the child or made telephone calls?

21      A.      I made a phone call, yes, that's correct.

22      Q.      And I also believe you testified that there had been  
23      surgery earlier in that?

24      A.      Correct.

25      Q.      Okay.  And do you have a memory of whether David -- how

1 long it took David Barnett to recover from that surgery?

2 A. No, I don't. But I can tell you what the information  
3 in the record does discuss.

4 Q. The St. Vincent Home, you -- is it possible that you  
5 contacted the St. Vincent Home hoping to discover that there  
6 was a bed or placement available for Mr. Barnett?

7 A. I assume so.

8 Q. Did you warn Deborah Corder the consequences of not  
9 cooperating with the Division of Family Services?

10 A. I don't have any memory of that.

11 Q. Your records do not reflect whether you encouraged her?

12 A. Correct. It doesn't state any discussion with her on  
13 that issue.

14 MR. HAWKE: Okay. Thank you. No further questions.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MR. SINDEL:

18 Q. Would it have been your practice or -- let me change  
19 that. Would it have been your practice to encourage the  
20 woman or the family that had legal custody of a child to  
21 cooperate with the Division of Family Services?

22 THE COURT: Physical custody? You said legal  
23 custody.

24 Q. I'm sorry, physical custody.

25 A. Yes. And their -- yes.

1 Q. Can you think of any reason in the world why you  
2 wouldn't have encouraged them?

3 A. No, I'm sure I did encourage to engage her. I  
4 encouraged her to be -- I tried to engage her. That was  
5 clear -- the implication is very strong that that was the  
6 decision in one of the PPRT meetings that we continue the  
7 placement and for me to continue to encourage cooperation and  
8 participation.

9 Q. And in November 1982 when she and Mr. Biggerstaff did  
10 not bring the child into court, was that an indication of her  
11 willingness to cooperate?

12 A. No.

13 Q. Can you think of -- other than kidnapping him and  
14 removing him across state lines, can you think of any other,  
15 basically you guys get out of our lives type approach to this  
16 whole thing?

17 A. It's pretty clear that she wasn't intending on  
18 cooperating.

19 Q. So whether or not you told her or not it was a good  
20 idea to cooperate, it was very clear to her that she should?

21 A. Yes.

22 Q. And, in fact, you made that clear throughout the entire  
23 time you dealt with the family, didn't you, we need your  
24 help?

25 A. I'm hoping I did.

1 Q. What?

2 A. I'm hoping I did. I don't have any memory of any -- I  
3 don't have specific memories of that.

4 Q. You urged her to enroll the child in school?

5 A. Yes.

6 Q. You said there was an entry in September?

7 A. Yes.

8 Q. All right. Now, he said to you about prior  
9 placement with a family, and you wanted to explain your  
10 answer, and he said no, just yes or no question. Do you  
11 recall that?

12 A. Yeah. I think it was the word -- it seemed like a  
13 limited -- I think that was the time where there was an  
14 implication that the recommendation for removal was based on  
15 the structure of the family, the lack of structure, and  
16 that's not the case. I just wanted to explain that.

17 Q. Okay. So there was two questions. And there was one,  
18 do you know whether or not the Division of Social Services or  
19 Family Services at that time ever actually recommended that  
20 that child be placed in the home of an alcoholic father or a  
21 heroin addict abuser? Do you know if they recommended that,  
22 or was that the condition that existed by the time you took  
23 over the case?

24 A. I -- at that point I never dealt with -- it was very  
25 rare in my experience to have a case that involved the court,



1 I believe. Because I was in the treatment unit, and that by  
2 definition is intact families. I think David's case was rare  
3 for me. I usually have families that were not involved with  
4 court.

5 Q. Did you -- when you answered the question concerning  
6 lack of structure --

7 A. Yes.

8 Q. -- was that the only reason that you could think of  
9 that he might need to get out of that house?

10 A. No.

11 Q. Were there many others that you've already testified  
12 to?

13 A. Yes. And the most important one was the lack of  
14 information of what was happening. The lack of information  
15 from the aunt and the grandmother about what was happening in  
16 the home so that we can ensure that he was safe and ensure  
17 his well-being.

18 Q. So there was absolutely no free exchange of information  
19 between the people who had physical custody, and you as a  
20 representative for the people who had legal custody?

21 A. Right.

22 Q. And so in your opinion you couldn't at all be  
23 comfortable that David was safe in that environment?

24 A. That's true. I didn't know what was happening.

25 MR. SINDEL: That's all I have.

## EXAMINATION

BY THE COURT:

Q. Just as a point of explanation, I have information about your earlier testimony, and then I've heard your testimony today. In the question I'm about to ask, I'm not trying to catch you or trick you up or anything like that, it's important for me to know what was spoken previously and what additional information came in today.

I understood from reading your prior testimony, again, bachelor's degree in psychology, social worker, Division of Family Services, worked there -- you became involved with David Pullen, his father, Robert Biggerstaff and other members of the family, became involved in supervising and placement of Mr. Barnett with his aunt in November 1981.

November 1982, you made a recommendation to remove Mr. Barnett from the family. The family appeared unstable. Mr. Barnett had no routine and his behavior did not improve. Family was reluctant and resistant in working with the DFS. They failed to provide information on what was happening with Mr. Barnett, John Barnett, and the aunt.

Debbie Corder was instructed to bring Mr. Barnett to court, they -- when I say Mr. Barnett, that's the petitioner. They did not. A capias warrant was issued and she went looking for Mr. Barnett, the petitioner. Deborah Corder was

1 arrested. Deborah's husband became involved. And Mr. Corder  
2 and a friend brought Mr. Barnett to the courthouse. She  
3 delivered custody to Mr. Barnett.

4 You delivered custody of petitioner to foster care.  
5 Parents were Mr. and Mrs. Calvin Reames. Before the transfer  
6 occurred, you had supervised seven visits of Mr. Barnett with  
7 his father. She said Mr. Barnett was always happy to see his  
8 father. He hugged him. There was touching, sitting in his  
9 lap, playing games together, a lot of smiles. On the very  
10 first visit Mr. Biggerstaff did not appear, he could not find  
11 a ride. You noticed a change in Mr. Barnett's behavior. He  
12 drew a picture of a cowboy shooting an Indian. And when you  
13 delivered Mr. Barnett, petitioner, to the Reames family,  
14 Mr. Barnett exhibited unusual behavior. He was very active.

15 When you took him from the family and delivered him  
16 to the Reames family, he was six years and seven months old.  
17 You were involved with the supervision for about a year and a  
18 half.

19 So is there anything I just said that's inconsistent  
20 with what you may have said at the prior testimony?

21 A. I don't know of anything that would be inconsistent.

22 Q. One thing that came up, you mentioned Vanessa as a  
23 person who was romantically or ostensibly romantically  
24 involved with Robert Biggerstaff. There's testimony that  
25 Mr. Barnett was seriously injured in a bathtub. A female was

1     seated by him. And I remember seeing something in all the  
2     records I read that that name of that person was Vanessa. Do  
3     you know anything about that?

4     A.     I don't remember anything. I don't know.

5     Q.     The suggestion is a strong one that Vanessa is the one  
6     that assaulted him. I'm just curious.

7             I was a state court judge. This has nothing to do  
8     with anything, but since you're here and I'm here, I'll ask a  
9     question. That's not a very good reason. I was a state  
10    court judge for 17 years and I did all the juvenile work for  
11    that time. And I made a foster mother who was a very good  
12    friend and good foster mother really came at me like a biting  
13    sow when I said, I have recently learned that the best foster  
14    home is not as good as the worst biological home. Could you  
15    explain that a little bit, of the importance of the  
16    biological family?

17    A.     Yes. In my studies, because I have an MSW now -- but  
18    in my experience I believe it's true that children, it  
19    doesn't matter how they are treated by their parents, they  
20    can be severely abused, neglected over time, terribly so, but  
21    they will never lose their attachment for their parents, they  
22    will never stop loving them. And the goal -- it's the last  
23    resort always to remove a child for that reason from parents.  
24    And it is only done when their safety is at risk.

25            THE COURT: Thank you. You are excused.

1 I keep records of exhibits admitted. I have asked  
2 that five copies of my slightly over two pages be distributed  
3 to counsel. I've asked five copies be prepared. Where it  
4 says W, that means witness. Where it says pages, that means  
5 my pages. I'm up to page 153. The name, the exhibit is  
6 identified. I try to write clearly so you can read what I'm  
7 writing. On the right side, the times are just the time the  
8 witness appeared. If there's a check mark, it's that exhibit  
9 was received. If there's a blank line, that means it perhaps  
10 had some court involvement but hasn't yet been received.

11 So I'm just going to circulate those to look at so  
12 you make sure we're all kind of operating with the same  
13 information.

14 Unless anyone wants to come in on Monday, we'll  
15 probably take up on Tuesday at 8:30.

16 MR. SINDEL: 8:30 Tuesday. Have a happy holiday to  
17 all the court personnel, all the people from Potosi, and to  
18 the Court.

19 THE COURT: All right. Court's in recess.

20 MR. SINDEL: And to the spectators.

21 THE COURT: Will perspective counsel have disclosed  
22 about the witnesses?

23 MR. SINDEL: I believe we have furnished a list to  
24 Mr. Hawke already of the witnesses. If that changes, I'll  
25 let him know.

1 THE COURT: All right. Thank you.

2 MR. HAWKE: And that's appreciated.

3 THE COURT: Thanks to the officers for your care of  
4 Mr. Barnett. Court is in recess.

5 (Court in recess at 2:09 p.m.)

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## C E R T I F I C A T E

I, Susan R. Moran, Registered Merit Reporter, in and for the United States District Court for the Eastern District of Missouri, do hereby certify that I was present at and reported in machine shorthand the proceedings in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 1 - 159 and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand at St. Louis, Missouri, this 16th day of September, 2014.

---

/s/ Susan R. Moran  
Registered Merit Reporter